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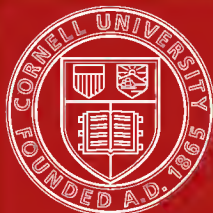
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COURT RULES

COMPRISING THOSE OF THE

Supreme Court of Pennsylvania,

WITH THE EQUITY RULES,

AND THE

RULES OF THE COURTS OF

Common Pleas and Quarter Sessions

AND OF THE

ORPHANS' COURT

OF

PHILADELPHIA COUNTY.

WITH A GENERAL INDEX.

COLLATED AND ANNOTATED BY
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OF THE PHILADELPHIA BAR.

PHILADELPHIA :
WILLIAM J. CAMPBELL, LAW PUBLISHER,
740 Sansom Street.
1892.

LA 11756

GENERAL OBSERVATIONS ON RULES.

I.—DEFINITION OF RULE.

A rule of court is an order made by a court of competent power for the purpose of regulating the practice therein.

It is either general or special. General when it is a standing order and regulates the practice of the court in all similar cases. Special when it is an order made and applying to a particular case only.

II.—AUTHORITY OF COURTS TO MAKE RULES.

The authority of courts of record to establish general rules of court is inherent, and may be confirmed by legislative enactment.

The power to make rules regulating its practice, is inherent in every court of record, and existed prior to any express legislative enactment. *Barry vs. Randolph*, 3 Buin. 277 (Dec. 22, 1810). Courts must of necessity possess this power, in order to facilitate business, prevent unnecessary delay, and promote substantial justice. *Duncan vs. Bell, Johnston, Jack & Co.*, 28 Pa. st. 516 (Armstrong, J., 1857). "Without this power, it would be impossible for courts of justice to dispatch the public business." *Snyder et al. vs. Bauchman*, 8 S. and R. 336 (Duncan, J., June, 1812.)

That the power inherently exists in the courts of this state, is established beyond question. *Barry vs. Randolph* (*supra*), *Vanatta vs. Anderson*, 3 Binu, 417 (Apr. 2, 1811); *Snyder et al. vs. Bauchman* (*supra*); *Duncan vs. Bell, Johnston, Jack & Co.*, (*supra*); *Russell vs. Archer*, 76 Pa. st., 473 (Mercur, J., Jan. 4, 1875); *Lehman vs. Howley*, 95 Pa. st., 295 (Sterrett, J., Oct. 18, 1880); *Wilkesbarre vs. Felts*, 134 Pa. st., 529 (May 5, 1890).

The courts never doubt their authority to make rules to regulate their practice. In *Vanatta vs. Anderson (supra)*, Chief Justice Tilghman said : " It is remarkable that many regulations of the practice, with respect to bail, dilatory pleas, etc., which was introduced into England by statute, have been the objects of rules of court in this country."

In *Flisher vs. Allen*, 141 Pa. St. 525, (*per curiam*, April 13, 1891) it was said in speaking of a rule which the common pleas courts of Philadelphia county had adopted, and which it was contended was unconstitutional, " the power of the courts of common pleas to adopt rules of practice is too well established to be now questioned. The only limitation of the powers is that they must not be contrary to law nor unreasonable."

The power to make rules, includes the power of altering or amending them at pleasure, so as best to answer the public good. 1 Stra. 315; 1 W. Bla. Rep. 264.

But independent of their inherent power, the courts of record in this state have express legislative power to make law rules.

Express statutory authority was conferred upon the Supreme Court.

1. By the sixth section of act 25 September 1786. " The justices of the supreme court have full power and authority, and are hereby directed to make and establish such rules for regulating the practice of said court and expediting the determination of suits, as they in their discretion shall judge necessary." 2 Sm. 392.

2. By section 13, act 20 March, 1799. " That the justices of the supreme court, or a majority of them, from time to time, as occasion shall require, may establish and declare what rules for the better conducting and expediting the business of said circuit courts shall be considered as of course, and what rules are discretionary, according to the circumstances of the case, and grantable only on motion ; and the several attorneys shall have the power of directing the prothonotaries of the several circuit courts to enter on their doquets such rules as shall be of course, according to the said regulations, without any application to the court for that purpose ; and that the justices of the said supreme court, either in bank at Philadelphia, or at the said circuit courts respectively, shall, on application made to them, have full power to enforce the due execu-

tion and returns of writs and process, and make and enforce such rules and orders respecting the said actions or suits, which shall be depending in the said several circuit courts, as they shall see fit ; and a certificate of the prothonotary of the said supreme court, under seal, of the same rules and orders, shall be filed and entered on the doquets of the said several circuit courts, and have the same validity and effects as if made in the said circuit courts respectively. 4 Dallas 362, P. L. 1826-27, appendix 9. Section eight of same act gave power to make rule for taking depositions.

This act was re-enacted by act 8 April, 1826, P. L. 1826-27, appendix 2.

3. By section 3, of act 16 June, 1836, P. L. 784, 786, which provides: "That the supreme court for itself and the courts of common pleas, district courts and orphans' court shall by rule of court, establish new writs and forms of proceedings."

Section 13, P. L. 789. "The supreme court may by general rules and regulations alter the practice in equity."

Section 21, P. L. 792. "Each of said courts (supreme, common pleas,oyer and terminer, quarter sessions, and orphans' court) shall have full power and authority to establish such rules for regulating the practice thereof respectively, and for expediting the determination of suits, causes and proceedings therein, as in their discretion they shall judge necessary or proper: *Provided*, that such rules shall not be inconsistent with the constitution and laws of this Commonwealth."

Statutory authority was conferred upon the District Courts and Courts of Common Pleas.

Upon the District Courts :

By section 6, act 11, March, 1836, P. L. 77 and section 3, act 29, April, 1844. "The said court, sitting in bank, shall have power from time to time, by general rules and orders, to make such alterations and regulations in respect to the time and manner of pleading, and the form and effect of pleadings, and the verifications and amendment thereof, and to variances occurring between the cause or causes of action alleged, and the evidence offered in support thereof, in suits brought in said court, and such rules for carrying the same into effect, either by way of staying proceedings in the action, or by the payment of costs, or otherwise, as shall be conducive to fairness, economy and dispatch in the trial of such actions; *Provided*, that nothing herein contained, shall be so construed as in any way to impair or effect the provisions of the fifth section of the act passed March, 21, 1806, entitled an act to regulate arbitration, and proceedings in courts of justice."

Upon the Courts of Common Pleas.

1. By section 6, article v, constitution of 1874. "In the counties of Philadelphia and Allegheny, all the jurisdiction and powers not vested in the district courts and courts of common pleas, subject to such changes as may be made by this constitution, or bylaw, shall be, in Philadelphia, vested in four, and in Allegheny, in two distinct and separate courts of equal and co-ordinate jurisdiction. * * *

"In Philadelphia * * * the several courts shall distribute and apportion the business among them in such manner as shall be provided by rules of court." See p. 73, General Rules of C. P. apportioning the business.

2. Act 24, May, 1878, P. L. 135.

Section 1. That the several courts of common pleas of this commonwealth, be and are hereby authorized to direct, by rule or standing order, that all writs used for the commencement of actions may, at the election of the party suing out the same, be made returnable on the first day of the next term, or on the second, third or fourth Monday of any intermediate month.

Section 2. That said courts shall have full power to make all necessary rules and regulations for the transaction of all business brought before them ; * * *

Authority was conferred by statute upon the Orphans' Court :

1. By section 58, act 29 March, 1832, P. L. 213. The several orphans' courts shall have power * * * and from time to time, to make rules for the regulation of the practice of said courts, not inconsistent with this act.

2. By section 21, act 16 June, 1836. (Page III.)

3. By constitution of 1874, art. v, section 22. "In every county wherein the population shall exceed one hundred and fifty thousand, the General Assembly shall, and in any other county may, establish a separate orphans' court, which shall exercise all the jurisdiction and powers now vested in, or which shall hereafter be conferred upon the orphans' courts."

4. By act 19 May, 1874, section 6, P. L. 206. "The said courts (O. C.) shall have and exercise all the jurisdiction and powers now vested in, or which may hereafter be conferred upon the orphans' and registers' courts of said counties. * * *

Section 9. The said courts shall have power to make all rules necessary for the exercise of the power hereby or which may hereafter be conferred.

5. By act 18 March, 1875, section 1, P. L. 29.

Section 1. That the judges of the separate orphans' courts of this commonwealth respectively, shall have power and are hereby authorized to establish, in their discretion, such rules and regulations as they may deem proper for the publication of advertisements of notices of the auditing of accounts of executors, administrators, guardians or trustees, of notices of sales of real estate under proceedings in said court, of notices to parties in proceedings in partition, and all other cases within their jurisdiction: *Provided*, that said court shall have supervision of and regulate the cost of such publication in all cases, as well by special order in particular cases as by general rules; that said courts shall establish a bill of costs to be chargeable to parties and to estates before them for settlement, for the services of the clerks of said courts, respectively, in the transaction of business of said courts.

Upon the court of quarter sessions by section 21, act 16 June, 1836. (Page III.)

III.—OBJECT OF RULES.

Rules have for their object the dispatch of public business, regularity in practice, and the securing of justice to suitors in the courts. *Vanatta vs. Anderson*, (*Supra*); *Vanormer vs. Ford*, 98 Pa. St., 177 (Paxson, J., Oct. 3, 1881). When they fail in these objects they cease to accomplish their legitimate purposes. *Duncan vs. Bell, Johnston, Jack & Co.*, 28 Pa. St., 516 (Armstrong, J., 1857). They are an indispensable aid in the routine of business. *Magill's Appeal*, 59 Pa. St., 430 (Thompson, C. J., Jan, 4, 1869).

Though they are intended to facilitate the dispatch of business, they cannot repeal an act of assembly. *Vanormer vs. Ford* (*supra*); nor interfere with rights secured by law. *Dubois vs. Turner*, 4 Yeates, 361 (Tilghman, C. J., 1807).

They are intended for the protection of the court as well as for suitors. *Haines vs. Comm.*, 90 Pa. St., 410 (Sharswood, C. J., Feb. 6, 1882).

An utter disregard by the court of its rules will lead to a reversal. *Brennan's Estate*, 65 Pa. St., 16 (Sharswood, J., Feb. 7, 1870).

IV.—RULES WITHIN THE POWER OF COURTS TO MAKE.

The courts of record of this State have power to make all necessary rules to regulate their practice, which they may deem expedient, *Mylin's Est.*, 7 W., 64 (Rogers, J., May, 1838) provided they be not contrary (1) to the law; (2) to the constitution. "To regulate the practice is to prescribe the manner of conducting proceedings, the time for putting in pleadings, etc." *Vanatta vs. Anderson (supra)*.

The power of the court to making the following rules has been considered and allowed: Rules allowing judgment for want of an affidavit of defence, *Vanatta vs. Anderson (supra)*, and the entry of judgment for such part of the plaintiff's demand as is not denied by the affidavit of defence, and to proceed to issue and trial for the rest of the claim, *Russell vs. Archer*, 76 Pa. St., 473 (Mercur, J., Jan. 4, 1875); *Stedman vs. Poterie*, 139 Pa. St., 100 (Mitchell, J., Jan. 5, 1891); requiring an affidavit of defence in an action on foreign attachment, *Hogg vs. Charlton*, 25 Pa. St., 200 (Lewis, C. J., 1855); providing that all cases of appeal from a justice of peace shall be tried on a declaration for money had and received, *Rundel vs. Keeler*, 7 Watts, 237 (Huston, J., July, 1838); that on an appeal by a defendant from a magistrate, if the defendant does not appear when the cause is called, and the plaintiff is ready, the court will affirm the judgment, *Lloyd vs. Foudy*, 4 W. N. C., 225 (*per curiam*, Feb. 12, 1877); or that if the appeal is not reached at the fourth or subsequent term, and no legal reason is assigned for putting off the trial, the court will affirm the judgment, if defendant is appellant, without hearing evidence in support of the claim, *Kuhn vs. Kisterbock*, 6 Wh., 166 (*per curiam*, Jan. 18, 1841); *Frost vs. Roatch*, id. 359 (Huston, J., April 3, 1841); prescribing a particular time when road petitions shall be presented, *Road in Little Britain*, 27 Pa. St. 69 (Black, J., 1856); that the transcript on appeal from a magistrate may stand

as a declaration or statement, *Warren vs. Hugo*, 7 C. C. Rep., 547 (Setser, P. J., Sullivan county, July 16, 1889); requiring that the plea *non est factum* be verified by affidavit, *McAdams' Executors vs. Stitwell*, 13 Pa. St., 90 (Bell, J., March, 1850); that facts stated in petitions and answers not denied, to be taken *pro confesso*, *Russell's Appeal*, 93 Pa. St., 384 (Sterritt, J., March 20, 1880); that a party may cause the other to file papers on which the action is based within a certain time, and in case of failure no evidence of such papers shall be allowed, *Bricker's Adm. vs. Dull*, 82 Pa. St., 328 (Woodward, J., Oct. 9, 1876); respecting the filing of depositions, *Shoemaker vs. Stiles*, 102 Pa. St., 549 (Trunkey, J., April 16, 1883); requiring a notice of rule to take deposition to be served and a copy of the rule to be prefixed to the notice, *Alexander vs. Alexander*, 5 Pa. St., 277 (Burnside, J., May 27, 1847); requiring defendant in ejectment, when so ruled, to give plaintiff "an abstract of the title under which he defends and a specification of all special facts and equitable matter that he intends to rely upon," and if he neglects "he shall not be permitted on the trial to set up any title in defence," *Scott vs. Ames*, 4 Pennypacker, 475 (*Per curiam*, Nov. 3, 1884), and see also *Lehman vs. Howley*, 95 Pa. St., 295 (Sterrett, J., Oct. 18, 1880); allowing garnishee to enter rule on plaintiff to file interrogatories within twenty days, and in default judgment of *non pros.* to be entered, *Dougherty vs. Thayer*, 78 Pa. St., 172 (*Per curiam*, March 29, 1875); requiring the publication of the trial list in a newspaper, and the county to pay the expense, *Venango Co. vs. Durban*, 3 Grant, 66 (Lewis, C. J., Jan. 13, 1857).

V. RULES NOT WITHIN THE POWER OF COURTS TO MAKE.

It is expressly declared by the 21st, section of the act of 16 June, 1826, P. L. 787, "That such rules shall not be inconsistent with the constitution and laws of the commonwealth."

The following rules have been declared beyond the power of the court to make, because of their being inconsistent with the law. A rule altering the general law of evidence *Doe vs. Winn*, 5 Pet., 233. A rule altering the manner of serving a notice required by statute, *Byerly vs. Vankirk*, 5 W. 370 (*Per curiam*, October 1836); *Boas vs. Nagle*, 3 S. & R. 250, (May 31, 1817). A rule which is in effect in the nature of an act of limitation. *Reist vs. Heilbrenner*, 11 S. & R. 131 (Duncan, J., May 1824). A rule providing that the plaintiff filing his declaration may have judgment in default of an appearance, at any time after return day and ten days service of the writ "without reference to the *quarto die post* and irrespective of the fact whether the declaration be filed at the return day or not". *Vanormer vs. Ford*, 98 Pa. St., 77 (Paxson, J. October 3, 1881).

A rule prescribing a different form of notice from that required by act of assembly. *Mathewson vs. Supervisors*, 8 C. C. Rep., 204 (Litser, P. J., Wyoming co., April 30, 1888).

A rule which directs that "writs of certiorari shall be returnable within twenty days from the issuing thereof, and shall be served on the magistrate at least five days before the return day." *North Beaver Overseers vs. Big Beaver Overseers*, 7 C. C. Rep., 340 (McMichael, J., Laurence co., November 18, 1889).

A rule allowing attachment for costs in proceeding founded on contract, *Pierce's Appeal*, 103 Pa. St., 27 (Trunkey, J., April 16, 1883).

A rule regulating the selection of road jury in a manner different from that prescribed by statute. *Johnston Road*, 1 P. & W., 243 (Huston, J., May, 1830).

A rule permitting a judgment for want of an affidavit of defence, pending a rule to arbitrate under section 8, act, June 16, 1836. *Hickernell vs. First National Bank*, 62 Pa. St., 146 (Agnew, J., May 24, 1869).

A standing rule on a garnishee in attachment execution to answer interrogatories. *Ringwalt vs. Bundle*, 59 Pa. St., 51 (Strong, J., May 27, 1869).

VI. CONSTRUCTION AND ENFORCEMENT OF RULES.

In the construction and enforcement of rules much power is given to the courts making the rules. The supreme court has repeatedly declared that the lower courts are the best judges of the meaning of their rules of practice. *Snyder vs. Bauchman*, 8 S. & R., 336, (Duncan, J., June, 1822); *Crosby et al. vs. Massey, et al.*, 1 P & W., 229, (Huston, J., May, 1830); *Ellmaker vs. Franklin Ins. Co.* 5 Pa. St., 183, (Rogers, J., April 27, 1847); *Daily vs. Green*, 15 Pa. St., 118, (Bell, J., July 13, 1850); *Daniel vs. Welver*, 24 Pa. St., 516, (Lewis, C. J., 1855); *Wickersham vs. Russell*, 51 Pa. St., 71, (Strong, J., Nov. 2, 1865); *Coleman vs. Mantz*, 60 Pa. St., 178, (Williams, J., July 7, 1870); *Casey vs. Comm.*, 4 Brewster, 62, (Thompson, C. J., Oct. 29, 1868); *Frank vs. Colhoun*, 59 Pa. St., 381, (Agnew, J., Jan. 5, 1860); *Wilkesbarre vs. Felts*, 135 Pa. St., 529, (*per curiam*, May 5, 1890).

The supreme court relies "greatly upon the interpretation of the court below of its own rules," *Umberger vs. Zearring*, 8 S. & R., 163 (Tilghman, C. J., May, 1822); *Fleming vs. Beck*, 48 Pa. St., 309, (Agnew, J., Jan. 2, 1865); *Bigoney vs. Stewart*, 68 Pa. St., 318, (Thompson, C. J., May 8, 1871). The lower courts are more familiar with their own rules and the practice under them, than the supreme court can possibly be. *Morison vs. Nevin*, 130 Pa. St., 344, *per curiam*, Nov. 11, 1889). The supreme court will hesitate to overturn the construction placed by the court below upon its rules. *Coleman vs. Mantz*, (*supra*). A liberal discretion, in construing and enforcing its rules, must always be accorded to every court. *Peck's Appeal*, 11 W. N. C., 31 (Sterrett, J., May 2, 1881. The discretion of the court below is not re-

viewable. *Howser vs. Comm.*, 51 Pa. St., 332, (Woodward, J., March 5, 1866).

"Nor is the complaint that the court misapplied its own rule of practice a matter of which we can take notice." *Howser vs. Comm.*, (*supra*). The supreme court will only reverse the lower court where its construction is palpably erroneous, *Coleman vs. Mantz*, (*supra*); or the mistake in construction is very obvious, *Daly vs. Green*, (*supra*); the error in construction must be manifest and material, *Bair & Gazzam vs. Hubartt*, 139 Pa. St., 96, (Mitchell, J., Jan. 5, 1891); unless the contrary is extremely clear, the construction given by the court to its own rules is supposed to be right, *Galloway vs. Saunders*, 2 S. & R. 405, (Tilghman, C. J., June, 1816). Where the construction given by the court below would distort the rules, the supreme court will reverse. *Gannon vs. Fritz*, 79 Pa. St., 303, (Woodward, J., Jan. 6, 1876).

A due observance of the rules of court, a strict adherence to their letter and spirit, should always be a cardinal tenet of interpretation, *Coulter's Estate*, 4, C. C. Rep. 112 (Wilson, P. J., Clarion county, Sept. 26, 1887) but an interpretation according to the spirit of the rule was adopted in, *Duncan vs. Bell, Johnston, Jack & Co.*, 28 Pa. St., 516 (Armstrong, J., 1857). Rules must not be so construed that in their execution they may set aside an act of assembly, *Kerr vs. Martin*, 122 Pa. St., 436 (Hand, J., Oct. 22, 1888); nor should they be construed so rigidly as to produce injustice, *Sterling vs. Ritchie*, 17 S. and R., 264.

In some cases rules upon the same subject should be construed together. In *Boyle vs. Horner*, 104 Pa. St., 319 (Sterrett, J., Nov. 5, 1883) in considering rules of the courts of common pleas of Allegheny court, relating to the entry of judgment for the part admitted to be due by the affidavit of defence, the supreme court in reversing the construction of the court below on these rules said "These rules are in *pari materia*, parts of a general system of practice and must be continued together."

To make a rule obligatory in all cases, it ought in its language plainly to apply to all cases. Even if a rule does in terms embrace the case, under certain circumstances it may be impossible to comply with it. *Burkhart vs. Parker*, 6 W. and S. 480 (Huston, J., Sept. 1843).

Upon a proper showing it is competent for a court to waive a limitation imposed by its own rules of practice. *Lance vs. Bonnell*, 105 Pa. St., 46 (Clark, J., Feby. 4, 1884); *McBeth vs. Newlin*, 15 W. N. C., 129 (Trunkey, J., Mrch 3, 1884); or in case of a palpable mistake, the rules may be waived. *Foust & Shaffer vs. Nor. Cen. Rwy. Co.*, 5 C. C. Rep., 268 (Gibson, P. J., York co., March 8, 1888); but the court will not relieve for mere neglect of counsel to observe them. *Sander vs. Berlstine*, 6 C. C. Rep., 579 (Stowe, P. J., Allegheny co., Nov. 12, 1888).

"It is better to have no rule than to depart from it on slight or frivolous pretexts, or to suit the emergencies of a particular case." *Rentsheimer vs. Bush*, 2 Pa. St., 88 (Rogers, J., Dec. 26, 1845).

In *Tilden vs. Worrell*, 30 Pa. St., 272 (Lewis, J., 1858), it seems as though the court acknowledged the right of the court below to entirely dispense with its own rules.

But rules of court cannot be waived by counsel or by the district attorney. They are intended for the protection of judges as well as of suitors. *Haines vs. Comm.*, 99 Pa. St., 410 (Sharswood, J., Feb'y 6, 1882).

VII.—ATTORNEYS AND RULES.

An attorney at law is bound to know the rules of the courts in which he practices, and is liable to his client for the consequences of ignorance or non-observance of the rules of practice. *Godefroy vs. Dalton*, 6 Bingh., 460 (19 E. C. L. R., 136), Tindal, C. J.

"The law requires an attorney to be acquainted with the practice of his court, with the ordinary rules of pleading and evidence, the existence of statutes and rules of

court, and in cases free from doubt, with their construction also." *Weeks* on Attorneys at Law, 474. An attorney, in undertaking the business of his client, professes himself to be acquainted, among other things with the rules of court. *id.*, 475.

ADDENDUM.

Note to Rule xxvi, Supreme Court, page 19.

"We notice that many of the Pennsylvania cases referred to in the paper book of the appellee, are cited by the name of the reporter, in violation of the rule of Court. Had this been observed upon the argument the book would have been suppressed." *Farquhar vs. McAlevy*, 142 Pa. St., 233 (*Per Curiam*, May 4, 1891).

Attention is directed to the following excerpts from the Act Approved the 19th day of May, 1897, Regulating the practice, bail, costs and fees on appeals to the Supreme Court and Superior Court.

CHARLES S. GREENE,

Prothonotary.

Philadelphia, June 10th, 1897.

“SECTION 1. BE IT ENACTED, &c., That in every case in which an appeal is taken to the Supreme Court or Superior Court, such appeal shall be entered in the court to which the appeal is taken; and filed with the same shall be an affidavit of the parties appellant, or some one of them, or of one of their chief officers or of their agent or attorney, that said appeal is not taken for the purpose of delay, but because appellants believe they have suffered injustice by the sentence, order, judgment or decree from which they appeal. Such affidavit may be made before any one authorized to administer oaths,” &c.

“SECTION 2. When an appeal has been entered the prothonotary of the appellate court shall issue a writ, in the nature of a writ of certiorari, directed to the court from which the appeal is taken,” &c.

“And no appeal shall be considered perfected until such writ be filed in the court below,” &c.

“SECTION 3. At the time of filing the appeal, the prothonotary of the appellate court shall be paid the sum of twelve dollars which shall be in full for all his service upon any appeal taken thereto, including the preparation and certifying the remittitur and record to the court below,

with a copy of the opinion in all cases, or for preparing and certifying the record to the Supreme Court in case of an appeal thereto from the Superior Court," &c.

"SECTION 4. No appeal shall be allowed in any case unless taken within **six calendar months** from the entry of the sentence, order, judgment or decree appealed from, nor shall an appeal supersede an execution issued or distribution ordered, unless taken and perfected and bail entered in the manner herein prescribed within **three weeks** from such entry," &c. *Provided*, "That in civil cases in which the right of appeal to the Superior Court has now expired an appeal may be taken and perfected within three months after this act goes into effect."

"SECTION 5. Bail, upon any appeal shall be entered in the Court from which the appeal is taken," &c.

"SECTION 20. At the expiration of ten days from the final decision of any cause by the Supreme Court, or Superior Court, the prothonotary thereof shall send back the record, with a remittitur and a copy of the opinion to the court from which it originally came, unless other steps be taken in the cause which shall require its detention."

"SECTION 23. This act shall go into effect July first, one thousand eight hundred and ninety-seven, and shall apply to cases then pending, but the limitation of time herein provided for as against any party entitled to appeal from a sentence, order, judgment or decree theretofore entered, shall not begin to run until that date, if but for this act the right of appeal would have extended after that date beyond the times herein prescribed."

RULES OF THE SUPREME COURT
OF
PENNSYLVANIA.

Arguments.

RULE I.

The court will call the cases for argument in the order in which they stand on the printed argument list. If neither party be present or ready to proceed with the argument, the case shall be non-prossed, unless reason to the contrary be shown to the satisfaction of the court.

RULE II.

All cases brought or to be brought up for review shall be placed upon the argument list next succeeding their entry, and in the order in which they stand upon the docket—unless advanced by the special order of the court. *Provided*, That no case shall be placed on the argument list where the writ of error, certiorari or appeal shall not have been taken twenty days before the return day.

(Proviso added by rule of June 7, 1889.)

RULE III.

No cause shall be continued when reached without permission of the court.

Bail in Error.

RULE IV.

Recognizances of bail in error shall be plainly drawn and engrossed on parchment or paper, in the following form, as near as may be : “ ——— county, to wit : You severally acknowledge to owe (the plaintiff in the action) the sum of (double the sum recovered), upon the condition that A. B. prosecute his writ of error with effect ; and if judgment be affirmed, or the writ of error be discontinued or non-prossed, to pay the debt, damages or costs (as the case may be) adjudged accruing upon such judgment, and all other damages and costs that may be awarded on such writ of error.”

RULE V.

The defendant in error or appellee may, within twenty days after notice of the taking of bail in error, except to the sufficiency thereof, when the plaintiff in error or appellant must either put in new bail, or the old bail must justify within ten days after exception taken ; in default thereof the writ of error shall not be a *superseas* of the execution. New bail may be put in or the old justified, within the ten days, before the prothonotary of the Court in the proper district, or before the prothonotary of the court of common pleas of the county to which the writ of error shall have been issued, or from which the appeal shall have come ; and in the latter case the new recognizance, or the affidavits of justification, shall be returned to the prothonotary of this court within the ten days allowed, not counting the day when the exception to bail was taken. Of the time and place of giving new bail or justifying the old, at least three days written notice shall be given to the opposite party or his attorney of record. For the purpose of this rule the prothonotaries of the several courts of common pleas are appointed commissioners of bail.

Attorneys.

RULE VI.

No person shall be admitted to practice as attorney in this court, unless he hath served a regular clerkship, within the State, to some practising attorney or gentleman of the law, of known abilities, for the term of four years, and afterwards shall have practiced as an attorney in one of the county courts of common pleas, or district courts, for the term of one year, or served such clerkship three years, and practiced two years ; *Provided always*, that in the case of a person applying to be admitted who shall appear to have studied the law with assiduity, under the direction of some practising attorney or gentleman of the law of this state, for the term of two years after his arrival at the age of twenty-one years, and afterwards practiced in some one of the county courts of common pleas for the term of two years, he may be admitted.

Graduates of the Law Department of the University of Pennsylvania, who have passed the preliminary examination before the Board of Examiners of Philadelphia county, and an examination upon Latin, and who have taken the full course of three years, and received the diploma and degree of Bachelor of Laws, may be admitted to practice in this court upon the expiration of three full years from the date of their preliminary examination upon filing with the prothonotary a certificate of the dean of the Law Department, stating these facts and exhibiting their diploma, together with a certificate of good character, as in other cases.

(The part of rule relating to Graduates of the University was adopted March 18, 1889.)

RULE VII.

Attorneys from other states, who have been admitted to the courts of common pleas of this state, may immedi-

ately thereafter be admitted in this court, provided that they are in good standing and have practiced for five years in the state from which they have removed.

RULE VIII.

All agreements and notices of attorneys touching the business of the court shall be in writing, otherwise they will be considered of no validity.*

RULE IX.

No attorney of this or any other court, sheriff's officer, bailiff or other person concerned in the execution of process, shall become bail on appeal or in error, except by special leave of the court previously obtained.

Criminal Cases.

RULE X.

In all the criminal cases brought up from the lower courts by certiorari, wherein a special allocatur has not been had, the prothonotary is instructed by this court to enter "writ quashed," and the records shall be returned to the courts from whence they came.

RULE XI.

No such writ of certiorari shall issue at the instance of a defendant who is at the time out on bail, until he enters a recognizance in the nature of special bail, to the satisfaction of the court or judge taking the same, condi-

*RULE VIII.—This rule "relates]to the ordinary routine of practice and is designed to exclude unseemly disputes and contradictions among gentleman of the bar in the presence of the court." *Reamer's Appeal*, 18 Pa. St., 510, Woodward J., June 28, 1852.

tioned for his appearance before the supreme court in banc, from time to time, as the court may order, until the final determination of the cause, and that he will not depart without the leave of the said Court.

RULE XIa.

Every praecipe for a writ of error or certiorari in a capital case shall be accompanied by a certificate, under the seal of the court below, of the date of the sentence, and if it shall appear from said certificate that more than twenty days have elapsed since said sentence, the prothonotary shall not issue said writ, unless the same be specially allowed by this court or one of the justices thereof.

The first Monday of each month shall be a special return day in each district for all writs of error and certiorari in cases of conviction and sentence of death for murder in the first degree. The fifth Monday after the issuing of the writ shall be assigned for the argument thereof: *Provided* the court shall then be in session in any district. If then in session in a district other than that in which the writ issued, the prothonotary issuing such writ, shall certify the record to the district in which the Court shall be sitting. If the Court shall not be in session at that time, the case shall be certified to the district in which the next term shall be held.

Capital cases shall be placed at the head of the list for argument.

The plaintiff in error shall serve his paper book on the proper district attorney ten days before the day assigned for the hearing, and the defendant in error shall serve his three days before the hearing.

Errors and Appeals.

All appeals taken under the Act of May 9, 1889, (P. L. 158.)* must be taken in this court as writs of errors have heretofore been taken, and in all such cases a writ of certiorari must be issued to bring up the record.

RULE XII.

In all cases brought into this court by writ of error, the counsel for the plaintiff in error shall, on or before the third day of the term to which the writ is returnable, specify in writing the particular errors which he assigns, and file the same in the prothonotary's office : and on failure so to do, the court may non pros. the writ.

RULE XIII.

In all cases of writs of error when the record is not returned on the return day, it shall be the duty of the prothonotary to enter a non pros., which shall not be taken off except by special order of the court.

* APPEALS.—On February 24, 1890, the supreme court, with reference to the Act of May 9, 1889, P. L. 158, "relating to writs of error and appeals to the supreme court," handed down the following :

"*PER CURIAM*.—As some confusion exists as to the proper construction of the Act of May 9, 1889, P. L. 158, relating to writs of error and appeals, we deem it proper to say that the primary object of said act appears to be to substitute an appeal for the ancient and well understood writs of error and certiorari. This is a mere change of name ; the proceeding itself is unchanged. The writ of error which comes here under the mask of an appeal, is still a writ of error in effect, with all its incidents. The same may be said of appeals which come up in the place of a certiorari. In each of this class of appeals, the appeal must be taken in this court as writs of error and certiorari were formerly taken. The provision in the second section of said act that "the record, on any appeal perfected in the court from which the appeal may be taken, may be filed in the supreme court without requiring a writ of certiorari," evidently refers to appeals from the orphans' court, appeals in equity, and from the distribution of money, which have always

RULE XIV.

The prothonotary shall endorse on each writ of error or certiorari to remove proceedings, a rule to appear and plead at the return day of the writ ; and on default of appearance when the cause is called for argument, and on proof of ten days service on the defendant in error or his counsel below, the court will proceed ex parte. And it is further ordered, that the court proceed in like manner on proof of the like service of notice in appeal cases.

RULE XV.

In all appeal cases, where the appellants neglect to bring up the record at the next term of this court after the appeal shall have been taken, any of the other parties interested may bring it up, and have the case presented and determined ex parte, or the appeal dismissed at the costs of the appellant.

RULE XVI.

In all cases where, in pursuance of the judgment of this court a cause goes back to the court below for further proceedings, it shall be the duty of the prothonotary to certify and send back with the order, decree or judgment, a copy of the opinion of the court which shall have been filed.; and the fees paid him therefor shall stand as part of the costs in the cause.

been taken in the court from which the decree appealed from was made. As to such appeals the practice remains unchanged. In such cases, a certiorari was almost invariably issued to bring up the record. It is the only proper and legal mode of doing so.

Instead of simplifying proceedings in this court, the act of 1889 has produced nothing but confusion. It was not called for by any public need ; it was not asked for by this court, nor by any considerable number of the members of the bar who practice therein, and it serves no useful purpose. We unanimously and respectfully suggest its early repeal by the Legislature." 131 Pa. St., xxi. See also *Rand vs. King*, 134 Pa. St., 641.

Paper Books.

The present rules in regard to the preparation of paper books in cases of writs of error shall be held to apply to all appeals under the Act of May 9, 1889.

RULE XVII.*¹

In a case where the writ of error is to a judgment on a verdict, the paper book of the plaintiff in error shall contain the following matters,² in the following order: 1. The names of all the parties as they stood on the record of the court below at the time of the trial, and the form of the action. 2. An abstract of the proceedings, showing the

*RULE XVII.—PAPER BOOKS.—1. The failure to present paper books is severely commented on by Justice Agnew in the case of *Ebbert's Appeal*, 70 Pa. St., 79, May 13, 1872. "The pressure of business upon this Bench, demands all the aid we can receive from counsel, who owe a duty to their client and to the court to furnish an argument and all the authorities within reach."

As to what should be contained in the paper books, the rules of court (Rules XVII, XIX, XX, XXI and XXV) are very explicit and the omission to print what the rules require is at the peril of the party litigant. *McBeth vs. Newlin*, 15 W. N. C., 129 (Trunkey J., March 3, 1884). *Dietrich vs. Addams*, 9 W. N. C., 492 (Sharswood, C. J. March 3, 1881). If, however, the parts omitted have no bearing upon the question before the court, he risks nothing. *McBeth vs. Newlin*, (supra).

2. In connection with what should be contained in the paper books, it would be well to consider the remarks of Chief Justice Paxson in *Bristor vs. Tasker*, 135 Pa. St., 110 (April 21, 1890). "The rules of court require a copy of the docket entries to be printed in the paper book for obvious reasons. We have a right to expect counsel to print them correctly, as upon them serious results sometimes depend. It is too much to expect the members of this court to verify them by the record in every instance, which we would be obliged to do if we are not safe in relying upon the care and integrity of counsel. The docket entries must be a literal copy as they stand upon the records of the court below. To present them to us in an altered or garbled form is an offence; if done intentionally and for the purpose of deceiving us, it would be an offence which would merit, and certainly receive the punishment of disbarment."

issue, and how it was made.³ 3. The verdict of the jury and the judgment thereon. 4. A history of the case. 5. The points, if any, which were submitted in writing to the court below. 6. The charge of the court. 7. The specifications of error. 8. A brief of the argument for the plaintiff in error. 9. An appendix containing the evidence,⁴ and if necessary, the pleading in full. 10. Counsel citing decisions of this court from leading periodicals shall certify, at the end of their briefs, that such cases are not reported in the state reports. In the absence of such certificate, the cases will not be considered.

(Part 10 is new ; adopted February 6, 1888.)

RULE XVIII.

Where the judgment below is on a case stated in the nature of a special verdict, the facts as agreed on by the parties, the opinion of the court and the argument of the counsel, will be sufficient.

3. "When abstracts showing the issue and how it was made have no bearing on the question for review he risks nothing by omitting to print such abstracts and pleadings." *McBeth vs. Newlin*, (supra).

4. "This does not mean the evidence of the plaintiff or defendant alone, nor such excerpts therefrom as he may choose to present." *McCandless vs. Young*, 96 Pa. St., 289 (Sterrett, J., January 3, 1881). The plaintiff in error in this case omitted to print the evidence which he claimed was relevant and excluded by the court below. The supreme court said "In the absence of that evidence, how can we say that it is not so (wholly irrelevant)? The presumption is that the ruling of the court below was correct, and that should prevail until the contrary is made manifest in the regular and orderly way."

This rule requires the entire evidence bearing on the question for review to be printed. Small portions of the testimony will not answer. It should be printed as delivered and not in narrative form. The failure to print the entire testimony and as delivered may result in the paper book being suppressed, the assignments disregarded and the case non-prossed. *Brooks vs. First Presbyterian Church*, 135 Pa. St., 137 (*Per Curiam*, May 19, 1890); *Burgan vs. Cahoon, et al.*, 1 Pennypacker, 320 (Green, J., November 7, 1881). But testimony wholly unnecessary to an understanding of the question need not be printed. *McBeth vs. Newlin*, (supra).

RULE XIX.*

In appeals the arrangement of the appellant's paper book shall be as follows: 1. The names of the parties and the nature of the proceedings. 2. A short abstract of the bill or petition and answer. 3. A history of the case. 4. The report of the auditor, or master, if there is one. 5. The exceptions taken to the report in the court below. 6. The opinion of the court on the exceptions and the decree made. 7. Assignments of error. 8. Argument on part of appellant.¹ 9. Appendix containing such documentary or other evidence as may be necessary.² 10. Counsel citing decisions of this court from legal periodicals shall certify, at the ends of their briefs, that such cases are not reported in the state reports. In the absence of such certificate the case will not be considered.

RULE XX.

In a certiorari to the court of quarter sessions or oyer and terminer, the paper book shall contain: 1. An abstract list or brief of all the petitions, motions, orders, reports, exceptions, etc., which may be necessary to give the court here a full view of the record at once; and this in the precise order of their respective dates, and with the date of each prefixed. 2. The exceptions which were overruled or sustained by the final order or judgment of the

* RULE XIX.—1. Where the paper book of the appellant from the decree of the court below confirming the report of a master, contains no argument in support of the specifications of error, the appeal may properly be dismissed on that ground. *Stockdale vs. Maginn*, 131 Pa. St., 507 (McCullum J., February 24, 1890). In an appeal from the orphans' court, all the evidence submitted below must be printed in the appellant's paper book. *Solt's Appeal*, 4 W. N. C., 298, (*Per Curiam*, February 19, 1877).

2.—See Note 4, Rule XVII.

court. 3. The opinion of the court, if it was filed in writing.*¹ 4. Assignments of error. 5. The argument. 6. Appendix containing the record in full.

RULE XXI.

The history of the case must contain a closely condensed statement of all the facts of which a knowledge may be necessary, in order to determine the points in controversy here; and the want of such a statement cannot be supplied by reference to another part of the paper book.

The history of the case must not contain an argument or any portion of the testimony.

(The latter portion added by rule adopted July 7, 1889.)

RULE XXII.†¹

Each error relied on must be specified particularly, and by itself.² If any specification embrace more than one

* RULE XX.—I. The supreme court will not review the opinion of the court below on a general exception. *Lower Augusta vs. Selinsgrove*, 64 Pa., 196; *W. Perry Township Overseers, vs. Oderson Township Overseers*, 2 Pa. S. C. Rep., 262, (*Per Curiam*, June 9, 1884).

† RULE XXII.—I. The court will take notice of error not assigned. *Bean's Road*, 25 Pa. St., 280. (Strong J. 1860).

Unless the assignments of error are made in conformity with Rules XXII, XXIII, and XXIV, they will not be noticed. *Brown vs. Brown* 35 Pa. St., 210 (Lewis J., 1855).

The importance of proper assignments of error is shown in the following extract from the opinion of Sterrett, J., in *Landis vs. Evans*, 113 Pa. St., 332 (October 4, 1886). "As has been repeatedly said, the assignments of error are an essential part of the pleadings in this court, and as such should be so complete in themselves as not to require reference to other parts of the record. When the case is disposed of and the record returned to the court below, the praecipe, assignments of error and plea thereto are all the papers that usually remain of record in this court, as the basis of our judgment or decree, as the case may be. It must be obvious, therefore, that each specification of error should, in and of itself, present the question we are called upon to decide."

"The onus is upon the plaintiff in error to make out his assignments affirmatively, and he must furnish in the record and on his paper book

point,³ or refer to more than one bill of exceptions,⁴ or raise more than one distinct question,⁵ it shall be considered a waiver of all the errors so alleged.⁶

all that is necessary for that purpose." Sharswood, J., *Aiken vs. Stewart*, 63 Pa. St., 30, January 3, 1870.

Court will sustain demurrer to improper assignment. *Neiss vs. Foster*, 64 Pa., 495.

Criticism on numerous assignments. *Dime Savings Institution vs. Allentown Bank*, 65 Pa., 116.

2. An assignment should be specific. *Yungfleisch's Appeal*, 1 Pa. S. C. Rep., 125, (March 31, 1879).

But "it is not proper practice to divide the assignments of error into separate clauses, and entitle them accordingly." *Kemmerer vs. Tool*, 81 Pa. St., 467 (Sharswood, J., May 8, 1876).

A general assignment of error setting forth "that the court erred in confirming the auditor's report," does not sufficiently indicate to the court the point intended to be raised. *Bull's Appeal*, 24 Pa. St., 286, (Lewis, J., May 17, 1855); *Wolf vs. Ferguson*, 129 Pa., 272 (*Per Curiam*, June 28, 1889); *Trullinger vs. Charles*, 129 Pa. St., 289, (*Per Curiam*, June 28, 1889); *Second Nat. Bank vs. Penna. Anthracite Coal Co.*, 140 Pa. St., 628 (*Per Curiam*, March 9, 1891). An assignment that the court erred in dismissing exceptions to the master's report, without setting out the exceptions, will not be considered. *Bowers, et. al. vs. Bennethum, et. al.*, 133 Pa. St., 306 (*Per Curiam*, May 17, 1890); *Sauer, et. al. vs. Mollinger, et. al.*, 138 Pa. St., 338 (*Per Curiam*, November 10, 1890); *Holton, et. al. vs. New Castle Rwy.*, 138 Pa. St., 111 (*Per Curiam*, November 3, 1890).

An assignment embracing all the testimony taken on a commission will not be sustained where part of the testimony was relevant and proper. *Pittsburgh Bridge Co. vs. Brown, et. al.*, 2 Mona., 341 (*Per Curiam*, January 7, 1891).

3. "Only one point or subject should be embraced in an assignment of error." *Bartolet's Appeal*, 1 Pa. S. C. Cases, 77 (*Per Curiam*, March 29, 1890). Therefore an assignment alleging error in the answers to the several points for instruction is not in accordance with the above rule. *Kelly vs. Bennett*, 132 Pa. St., 218 (Paxson, J., February 3 1890). The grouping of the refusal of six different points into one assignment is not in compliance with the rules. *Borland vs. Meurer*, 139 Pa. St., 513 (Mitchell, J., January 26, 1891). An assignment embracing eighteen specifications of error to the report of a master will not be considered. *Desh's Appeal*, 42 L. I., 161 (Sterrett, J., Oct. 6, 1884).

4. An assignment of error "that the court erred in rejecting the offer contained in the 1st, 2nd and 3rd bill of exceptions sealed" not considered. *Schwenk vs. County of Montgomery*, 26 Pa. St., 281 (Knox,

RULE XXIII.*

When the error assigned is to the charge of the court, or to answer to points, the part of the charge¹ or the points

J., 1856). An assignment of error referring to three bills of exceptions, but giving the substance of neither, will not be considered. *Good Intent Co. vs. Hartzell*, 22 Pa. St., 277 (Black, C. J., 1853). Where the bill of exceptions is incomplete the assignments will not be considered. *Comm. vs. Ribert*, 28 W. N. C., 296 (Mitchell, J., October 5, 1891). Object of bills of exceptions, see 27 W. N. C. 123.

5. *Twitchell's Appeal*, 4 W. N. C., 68 (*Per Curiam*, February 5, 1877).

6. The object of an assignment of error is to bring to the attention of the appellate court the error committed in the court below, and in order that the higher court may be fully informed of the error committed, the assignment should be full, particular, and self-supporting, and without reference to other disconnected parts.

The following assignments have been held defective :

That "the court erred in the order of June 1, 1888, without the award of a procedendo by the supreme court," without setting out the order. *Benzinger Twp. Road*, 135 Pa. St., 176 (Paxson, C. J., May 19, 1890).

That the court erred, 1. In overruling exceptions filed to the account of the executors. 2. In not sustaining the exception filed by counsel for the creditors, etc. *Williams' Appeal*, 122 Pa. St., 472 (Paxson, C. J., October 22, 1888).

That the court erred "In dismissing the exceptions filed by the exceptants (by name) to the adjudication of the auditing judge." *Varrier's Estate*, 120 Pa. St., 344; 21 W. N. C., 449 (Paxson, C. J., May 14, 1888).

The court also refused to consider an assignment alleging that the master erred in his finding of fact, because the error assigned was to the action of the master and not to the action of the court. *Warner vs. McMullin*, 131 Pa. St., 370 (Paxson, C. J., January 6, 1890).

*RULE XXIII.—1. This rule requires the entire language of the court excepted to, to be brought to the attention of the court. Where the assignment is to a part of the charge of the court, the part excepted to must be set forth *totidem verbis*, as the rule requires, or the assignment will be treated the same as none. Rule XXIV; *Kunes vs. Spangler*, 2 Pennypacker, 101 (*Per Curiam*, February 27, 1882); *Sorg vs. First German Congregation*, 63 Pa. St., 156 (Sharswood J., January 3, 1870); *Cramer vs. Carlisle Bank*, 2 Grant 267 (Lewis, J., July 6, 1852); *Comm. vs. Orr*, 138 Pa. St., 276 (Paxson, C. J., November 10, 1890). The language of the court must be quoted exactly. *Hutchinson vs. Campbell*, 26 Pa. St., 273 (Knox J., 1853). *Criswell vs. Attemus*,

and answers² referred to must be quoted *totidem verbis*³ in the specification.

20 Pa. St., 124, (Lewis J., 1852.) The precise phraseology of the court should be given. *McCord vs. Durant*, 134 Pa. St., 184 (*Per Curiam*, April 7, 1890). And where it is alleged as error that the charge as a whole was unfair and one-sided, the better practice is to assign the entire charge as error." Paxson C. J., in *Comm. vs. Orr*, 138 Pa. St., 276 (November 10, 1890); otherwise the assignment will not be considered. *Underzook vs. Harris*, 140 Pa. St., 236 (*Per Curiam*, February 23, 1891).

The language of the court excepted to should be printed as part of the assignment; the printing of the language elsewhere in the paper book does not make a compliance with the rule. *Gilmore vs. Pittsburgh, Virginia and Charleston R. R. Co.*, 104 Pa. St., 275 (Mercur, C. J., January 7, 1884). *Dietrich vs. Addams*, 9 W. N. C., 492 (Sharswood, C. J., March 3, 1881).

Where the error assigned is the refusal of the court to submit the case to the jury, the whole evidence must be printed. *Davenport vs. Wright*, 51 Pa., 292.

The omission of the court to charge specifically is not assignable for error, where no points for instruction were presented, *Serfass vs. Dreisbach*, 141 Pa. St., (*Per Curiam*, March 23 1891.)

2. In the assignment of error to the answers made by the court to points the rule should be carefully followed, otherwise the assignment will be considered the same as none. Rule XXIV; *Readdy vs. Shamokin Borough*, 137 Pa. St., 92 (*Per Curiam*, October 6, 1890.) *Penna. R. R. Co. vs. Sly*, 65 Pa. St., 205 (Sharswood, J., April 4, 1870.) It seems strange that counsel should expect the court to consider an assignment that "the court erred in not answering defendant's points" and not state what the points were. *Headly vs. Renner*, 129 Pa. St., 542, (*Per Curiam*, October 28, 1889); *Neiss vs. Foster*, 64 Pa. St., 495 (Thompson, C. J., March 31, 1890); *Good Intent Co. vs. Hartzell*, 22 Pa. St., 227 (Black, C. J., 1853); *Cobb & Kearst vs. Stephens*, 2 Phila. R., 150: 13 L. I., 245 (S. C. Knox, J.) *Clark vs. Smith*, 25 Pa. St., 137 (Lewis, C. J., 1885). The court cannot say whether the court below erred or not in answering the points unless the points as well as the answers are set out in the assignment. *Arthurs vs. Smarthers*, 38 Pa. St., 408 (Thompson, J., January 7, 1861). *Kurtz vs. Harris*, 2 Mona., 328 (*Per Curiam*, October 1, 1888). Nor will the court consider assignments which set out the points but not the answers. *Readdy vs. Shamokin Borough*, 137 Pa. St., 92, (*Per Curiam*, October 6, 1890).

Assignments of error that the court erred "in its answer to defendant's second point; it should have been refused without qualification" and "in affirming defendant's third point" without printing point or

RULE XXIV.*

When the error assigned is to the admission or rejection of evidence¹, the specification must quote the full substance of the bill of exceptions, or copy the bill in immediate connection with the specification. When the error is as to the admission or rejection of a writing,² a full copy of the writing must be printed in the paper book. Any assignment of error not according to this and the last rule will be held the same as none.

answer "are not in accordance with the rules of court and will not be considered." *Long vs. Midford Twp.*, 137 Pa. St., 122 (*Per Curiam*, October 6, 1890).

An assignment of error alleging "error in the court's answers to points" is defective, insufficient and not according to the rules unless it shows wherein and how the court erred or in what the alleged mistake consisted. *Long vs. Milford Twp.*, 137 Pa. St., 122 (*Per Curiam*, October 6, 1890).

An assignment of error that "the court erred in submitting to the jury, a question of fact about which there is no evidence" without stating what that question of fact is, is not according to the rule. *Sweeney vs. Ten Mile Oil and Gas Co.*, 130 Pa., 193 (Sterrett, J., November 4, 1880). If it does not appear that an exception has been taken, the assignment will not be considered. *Huckenstein vs. Kelly & Jones Co.*, 139 Pa. St., 201, (Paxson, C. J., Jan'y 5, 1891).

3.—The language of the court must be quoted; not what counsel supposed was its legal effect. *Aspell, et. al. vs. Smilh*, 134 Pa. St., 39 (*Per Curiam*, April 7, 1890).

* RULE XXIV.—"The object of Rule XXIV is apparent. The assignments of error are all that remain in this court after the record goes down, to show upon what ground the court has decided the cases. They really constitute the pleadings here. If the evidence objected to and admitted is not set forth in the assignment, or the substance of it given, there is nothing in this court to show that error has been committed. The answer to the question may have been perfectly harmless, or the witness may not have answered it at all, or he may have had no knowledge upon the subject. This is a sufficient reason for the Rule, but it is not the only one. When the evidence is given as required, this court can see at a glance whether the objection is well founded; whereas, if not given, we are obliged to turn to the evidence in the examination of each assign-

ment. In this case, there were nineteen of such assignments, and it requires that each judge of this court shall search out the evidence from a mass of about two hundred printed pages, in connection with each assignment. This is imposing an amount of useless labor upon us, which we are not called upon to bear, and which we have not the leisure to perform, even had we the inclination. It consumes time that should be devoted to more important duties. The rule of court is a wise and proper regulation and imposes no hardship upon the bar. It is so constantly and persistently violated that we can only correct it by declining to consider alleged errors not properly assigned." *Battles vs. Stiney*, 129 Pa. St., 460.

1. The practice of the court under this rule is to disregard all assignments of error to the admission or rejection of oral or written evidence unless the assignment is in strict conformity with the rule. (See cases below).

The rule of court is plain and easily understood. It is astonishing how counsel can expect the court to pass upon the admissibility or inadmissibility, the relevancy or irrelevancy of testimony unless the testimony and all other facts necessary to a proper comprehension of the question are presented in the paper books for the court's consideration. Where an assignment relates to the admission of depositions and the objection was made that the rules of the lower court concerning depositions had not been complied with, but the rules were not printed nor the court informed what they were, the assignment cannot be considered. *Express Publishing Co. vs. Aldine Press*, 126 Pa., 347 (McCollum, J., May 13, 1889).

If the evidence or that which preceded it as the ground for its introduction is not contained in the paper book, the court will presume the evidence to have been rightly admitted. *Humblewright vs. Armstrong*, 25 Pa. St., 428 (Knox, J., 1855); *Royse vs. May*, 93 Pa. St., 454 (Mercur, J., May 3, 1880); *Titusville B. and L. Ass'n. vs. McCombs and wife*, 92 Pa. St., 264 (*Per Curiam*, January 5, 1880). If the evidence is not set out the assignment cannot be considered. *Cornish vs. Hooker*, 141 Pa. St., 138 (*Per Curiam*, March 23, 1891).

The assignment must contain together with the testimony, the offer, the objection and the ruling of the court below. The full bill of exceptions on which the assignment is based, must come before the court as it was presented in the court below. *Warfel vs. Knott*, 128 Pa. St., 528 (Williams, J., October 7, 1889); *Wylie vs. Mansley*, 132 Pa. St., 65 (Williams, J., January 27, 1890); *Long vs. Midford Twp.*, 137 Pa. St., 122, (*Per Curiam*, October 6, 1890). *Huckenstein vs. Kelly & Jones Co.*, 139 Pa., 201 (Paxson, J., January 5, 1891).

An assignment giving the objection, but not the offer nor substance of the testimony, will not be considered. *Burson vs. Fire Ass'n.*, 136 Pa.

St., 267 (Paxson, C. J., October 6, 1890). *Chambers vs. South Chester Bor.*, 140 Pa. St., 510 (Green, J., March 9, 1891). The rule is not conformed to by presenting the testimony only; the full substance of the bill must be quoted also. *Melvin vs. Melvin*, 130 Pa. St., 6 (*Per Curiam*, October 28, 1889). *Adams vs. Uhler*, 2 Pa. S. C. Rep., 96 (Trunkey, J., April 13, 1884). If the offer is admitted all the testimony given under it should be contained in the assignment. *Kennedy vs. Atkinson*, 2 Mona., 602 (*Per Curiam*, January 7, 1890).

The assignment must not only show the evidence excepted to because of its admission, but also that the exceptions were sealed. *Readdy vs. Shamokin Bor.*, 137 Pa. St., 98 (*Per Curiam*, October 6, 1890). *Augenstein vs. Jones*, 139, Pa., 183 (Green, J., January 5, 1891). And that the exception was taken at the time of the admission or rejection of the evidence; a general exception at the end of the bill does not answer. *Yeager vs. Fuss*, 9 W. N. C., 557 (*Per Curiam*, January 31, 1881). Further than this the specification should give "the bill of exceptions" and "the full substance of it" * * "in immediate connection with the specification." *Rice vs. Farmers' and Drovers' Bank*, 22 Pa. St., 118 (Lewis, J., September 22, 1853); *Yeager vs. Weaver*, 64 Pa. St., 425 (Sharswood, J., March 31, 1870). *Culin vs. Glass Works*, 108 Pa. St., 220 (Sterrett, J., February 9, 1885); *Fox vs. Fox*, 96 Pa. St., 60 (*Per Curiam*, November 8, 1880); *Thompson vs. McConnell*, 1 Gr., 396 (Knox J., January 14, 1856); *Burkholder vs. Stahl*, 58 Pa. St., 371 (Thompson, C. J., July 6, 1869); *O'Donnell vs. Allegheny R. R. Co.*, 50 Pa. St., 490 (Woodward, C. J., 1865); *Reimer vs. Stuber*, 20 Pa. St., 458 (Black, C. J., May 12, 1853); *Daniel vs. Daniel*, 23 Pa., 198 (Black, C. J., 1854); *Hultz vs. Comm.*, 3 Gr., 61 (Lewis, C. J., January 12, 1857).

An assignment that does not show what testimony was admitted will be disregarded. *Fisher vs. Baden*, 138 Pa., 301. *Per Curiam*, November 10, 1890.

Assignments of errors to the exclusion or admission of evidence should set forth the name of the witness. *Donahue vs. O'Connor*, 8 W. N. C., 540 (Paxson, J., May 3, 1880).

Where the error assigned to the admission of testimony as in the overruling of defendant's objection to a question and answer, and the assignment shows only the question and answer but omitted the name of witness, whose witness he was, and a reference to the page of the testimony where the offer might be found, the assignment will not be considered.

Dawes vs. O'Reilly, 126 Pa., 440 (*Per Curiam*, May 13, 1889).

Gates vs. Watt, 127 Pa., 20 (*Per Curiam*, May 27, 1889).

Sticker vs. Crepeck, 127 Pa., 446 (*Per Curiam*, June 28, 1889).

2. WRITTEN EVIDENCE.—When the error assigned is to the admission or rejection of a writing, a full copy of the writing must be printed with the paper book.

RULE XXV.

The brief of the argument must contain a clear statement of the points on which the party relies, with such reasons and arguments as he may see proper to add, together with all the authorities which he thinks pertinent. Where the error assigned is to the finding of facts by an auditor or master, the printed argument shall contain a synopsis of all the evidence bearing upon such disputed

In *Aiken vs. Stewart*, 63 Pa., 30 (January 3, 1870), Judge Sharswood said. "It is an established rule of practice in this Court, not to reverse on account of the reception or rejection of written evidence without being furnished either with the paper in question or a copy of it" quoting *Gratz vs. Gratz*, 4 Rawle 411; *Stafford vs. Stafford*, 3 Casey 144 (27 Pa). See also *Wilvert, et. al. vs. Sunbury Bor.*, 81 *Pa. St., 57 (Williams, J., October 18, 1871); *Kille vs. Ege*, 79 Pa., 15 (*Per Curiam*, May 24, 1875); *Reynolds vs. Cridge*, 131 Pa. St., 189 (Mitchell, J., January 6, 1890).

It is impossible for the Court to say whether there is error or not in the admission or rejection of written evidence, unless the instrument or a copy of it is presented in the paper book. *Stafford vs. Stafford*, 27 Pa. St., 144 (Woodward, J., 1856).

Where it is assigned as error that letters were admitted or rejected, the letters should be copied into the paper book.

Kirk vs. Hartman, 63 Pa. St., 97, (Sharswood, J., May 5, 1870.)

Otherwise, how is the court to know their pertinency to the cause at issue? *Erie City Iron Works vs. Barber*, 106 Pa., 125 (Trunkey, J., October 6, 1884).

If the assignment of error is the admission of a receipt, the receipt must be printed in the paper book. *Stafford vs. Stafford*, 27 Pa., 144 (Woodward, J., 1856).

If to the refusal to admit a certified copy of a record, the record must be set out in the paper book. *Kreiner vs. Rochester, etc., R. R. Co.*, 135 Pa., 184 (*Per Curiam*, May 18, 1890).

Where the offer was to prove "by the report of the master" that the amount of the mortgage was paid prior to the *scire facias* thereon, the report of the master should be set forth. *Sweetzer vs. Atterbury*, 100 Pa., 18 (Mercur, J., October 2, 1882).

Where the paper book did not contain a copy of an ordinance referred to in the assignment, the assignment was for that reason disregarded. *Wilvert, et. al. vs. Sunbury Borough*, 81 * Pa. St., 57 (Williams, J., October, 1871).

question of fact, with a reference to the page or pages of the paper book where such evidence may be found in extenso.

(This is an amendment of the old rule, and was adopted June 7, 1889.)

RULE XXVI.

Where an authority is cited the principle intended to be supported by it must be stated. A mere reference to the book will not be sufficient. Pennsylvania cases decided since the commencement of the State Reports must be cited by the volume of said State Reports. Whenever decisions of this Court are cited from the legal periodicals they must be accompanied by the certificate of counsel that said cases have not been reported in the State Reports.

(Adopted June 7, 1889; amends old Rule XXVI, and supplies addition to Rule XIX, adopted February 6, 1888.)

RULE XXVII.

The paper book of the defendant in error or appellee, may, if he chooses, contain no more than his argument, to which Rules XXV. and XXVI. will be held to apply. But he may make it to embrace a counter-statement, giving such version of the facts as he asserts to be the true one.

RULE XXVIII.

In cases originating in the county of Philadelphia, the plaintiff in error or appellant shall serve a copy of his paper book on the opposite party, or his attorney, at least ten days before the first day of the term to which the writ of error or appeal is entered, and when the cause is called shall furnish one copy to each of the Judges, and file eight with the Prothonotary, two for the reporter, two for the reporter of Pennypacker's Reports, one for the Law Association of Philadelphia, one for the Weekly Notes of Cases, one for the State Library, and one to be filed in his office. The

defendant in error shall serve a copy of his paper book on the opposite party, or his attorney, at least five days before the argument, furnish a copy to each Judge, and file eight with the Prothonotary for the same purposes as the paper books of the plaintiff in error or appellant.

Rule was amended by order filed April 21, 1884, requiring two copies for Pennypacker's Reports.

RULE XXIX.

In all cases except those originating in the county of Philadelphia, the plaintiff in error or appellant shall serve a copy of his paper book on the opposite party, or his attorney, at least twelve days before the day appointed for hearing the cases from the county where the cause was tried; and the defendant in error or appellee shall serve a copy of his paper book on the opposite party, or his attorney, at least five days before the time appointed for hearing as aforesaid. But if the writ of error or appeal shall have been taken thirty days or more before the day assigned for the hearing as aforesaid, the paper book of the plaintiff in error or appellant shall be served at least twenty days, and that of the opposite party at least five days before the days assigned for the hearing of the said causes. When the cause is called, each party shall furnish a copy of his paper book to each Judge, and file six copies with the Prothonotary, one of which is to remain with the records, and two to be delivered to the reporter, one for the Weekly Notes and Cases, one for the State Library, and one for the Law Association of Philadelphia.

RULE XXX.

When the plaintiff in error or appellant is in default, according to these rules, he may be non-suited on motion; and when the defendant in error or appellee is in default, he will not be heard by the Court, except on the request of his adversary, and not then if his negligence has been gross.

RULE XXXI.

When paper books are furnished which differ in any material respect from those here prescribed, the parties furnishing them shall be considered in the same default as if none had been furnished, and on a proper occasion the Court will, of its own motion, non-suit or silence the defaulting party, or suppress the paper book.*

RULE XXXII.

Paper books shall be furnished in the shape and size of a common octavo pamphlet, on ordinary printing paper.

All paper books, exceeding twenty pages in length, shall be accompanied by a full and complete index. The names of the parties and the name of the Court to which the writ of error, certiorari or appeal is taken, shall appear on the cover in all cases.†

The latter part adopted June 7, 1889.

RULE XXXIII.

Rule XXII. does not apply to cases of judgment on facts agreed in the nature of a special verdict. In such cases it is enough to say that the judgment is erroneous, without more. But that rule has no other exception.

Road Cases.

RULE XXXIV.

On the return of any certiorari for the removal of any order, judgment, or proceedings in relation to a public or private road, this Court will not suffer the merits of the

* A paper book containing scandalous matter will be suppressed. *Matthew's Appeal*, 104, Pa. St. 444, *Mercur C. J.*, October 30, 1883.

† See *Hessel vs. Bradstreet Co.*, 141 Pa. St. 501 (*Per Curiam*, April 13, 1891); see also *Wilson vs. Scranton City*, id., 621 (*Mitchell J.*, April 20, 1891).

case to be entered into, nor reverse the order of the Sessions, unless for some irregularity apparent on the record, or that the Court below have exceeded their jurisdiction, or have erred in their judgment in point of law.

Short Causes.

RULE XXXV.

The Prothonotary of each district shall keep a separate list for short causes.

RULE XXXVI.

To this list all causes shall be transferred in which the attorney of either party shall certify that it is a short cause.

RULE XXXVII.

The causes on this list shall have precedence over all others on the Wednesday of every week in which the same causes might be heard, if they had remained on the general list, and had been reached in their order.

RULE XXXVIII.

Where a cause has been certified to be a short cause by the attorney of one party, and the attorney of the other party will certify that it is not so, and that injustice may be done to his client by placing it on the list of short causes, it shall be put back again on the regular list. Provided, that no cause shall be certified off after the short list is taken up on Wednesday morning.

Proviso added June 7, 1889.

RULE XXXIX.

On the hearing of short causes, the speeches of counsel shall be limited to fifteen minutes on each side.

RULE XL.

The hearing of short causes shall not be the exclusive business of Wednesdays. When they are disposed of, the general list or hour list shall be called as on other days; but the short list shall be finished before any other business. It shall be the duty of the Prothonotary to put up in some conspicuous part of the court-room a copy of the short list, and this shall be notice of the transfer of the causes which are on it. No party shall be permitted to certify any cause back to the regular list or hour list after three days from the time it has been placed in the short list.

Hour List.

RULE XLI.

Eastern District.

The Prothonotary of the Eastern District shall make a list of causes taken from the list for the city and county of Philadelphia, and to be called the "Hour List". The attorney or solicitor of either party may order a cause on said list any time before or during the term. No cause thus ordered thereon shall be stricken therefrom without permission of the Court. The causes on the said list shall be heard in the order they were set down thereon, and shall have precedence over all other causes, except those on the "Short List," capital cases, and cases specially placed at the head of the list. In the argument of cases on the "Hour List," counsel shall be heard one-half hour only on each side.

For the remainder of the term the Prothonotary shall make a list for each week, to be called the "Hour List." The attorney or solicitor of either party may order a cause on the said list at any time before or during the term, and prior to Tuesday noon of the week in which the case is assigned for argument. No case thus ordered thereon

shall be stricken therefrom without permission of the Court. The causes on said list shall be heard in the order they were set down thereon, and shall have precedence over all other causes, except those on the "Short List," capital cases, and cases specially placed at the head of the list. In the argument of the "Hour List," counsel shall be heard for one-half hour only on each side.

All causes remaining over, undisposed of from former terms, and set down for argument on the "Hour List," shall be placed at the head of that list, in the order of their numbers and terms.

Middle and Western Districts.

For each week during the sitting of the Court in the Middle and Western Districts the Prothonotary shall make a list to be called the hour list. The attorney of either party may order a case on said list at any time after writ issued or appeal taken prior to Tuesday noon of the week in which the case is assigned for argument. No case thus ordered thereon shall be stricken therefrom without permission of the Court. The cases on said list shall be heard in the order they were set down, and shall have precedence over all other cases except those on the short list, and in the argument thereof counsel shall be heard for one-half hour only on each side.

All cases remaining over, undisposed of from former terms and set down for argument on the hour list, shall be placed at the head of that list in the order of their numbers and terms.

Rule XLI. as far as it concerned the Eastern District was amended January 4, 1883, as follows :—

That the Hour List be suspended in the Eastern District during the period assigned to the argument of cases from the county of Philadelphia.

The argument of each cause shall be limited to one hour, unless the Chief Justice, upon an examination of the paper books, shall consider more time to be necessary.

Sixty causes shall be assigned to each week, and a list thereof shall be made up and published by the Prothonotary on the Saturday preceding. Said causes shall be set down in the order of their term and number, and shall be numbered on said list consecutively. The first twelve cases on said weekly list shall be assigned for argument on Monday, and for each succeeding day of the week, except Saturday, the first twelve cases theretofore undisposed of on said list shall be assigned for argument. No cause on said list shall be continued when reached, except for a sufficient cause. Engagements of counsel in the lower Courts will not be recognized as a reason for the continuance or postponement of a cause, except when they are actually engaged in a trial which has been commenced in a previous week, and is unfinished.

The Short List and the rule in regard to capital cases shall remain as heretofore.

And now June 11, 1885, it is ordered that the hour list be suspended in each of the several districts.

The argument of each case shall be limited to one hour, unless when it is taken up for argument the Chief Justice, on an examination of the paper books, shall determine that more time is necessary. The Short List, and the rule in regard to capital cases, shall remain as heretofore.

This order is not to apply to the counties of Philadelphia and Allegheny, so as to change or effect the special rules there in force.

Districts of the Supreme Court of Pennsylvania.

RULE XLII.

And now, November 25, 1881, by virtue and in pursuance of an Act of the General Assembly of the Commonwealth of Pennsylvania, approved the fifth day of May, 1876, entitled "An Act authorizing the Supreme Court to change and transfer any of the counties of the Commonwealth from any of the districts of said Court" (P. L. 115), it is hereby ordered by the said Court, now sitting at Pittsburgh, in and for the Western District thereof, as follows, that is to say :

The following counties shall be and are hereby transferred from the Middle District to the Eastern District of the said Court, viz :—

Bedford,	Fulton,	Northumberland,
Blair,	Huntingdon,	Perry,
Cumberland,	Juniata,	Potter,
Centre,	Lancaster,	Snyder,
Columbia,	Lycoming,	Sullivan,
Clinton,	Lebanon,	Tioga,
Clearfield,	Mifflin,	Union,
Cameron,	Montour,	Warren,
Elk,	McKean,	York,

The following counties shall be and are hereby transferred from the Western District to the Eastern District of the said Court, viz :—

Armstrong,	Crawford,	Indiana,
Butler,	Erie,	Lawrence,
Cambria,	Fayette,	Mercer,
Clarion,	Forest,	Somerset,

By reason of said transfer, the Western, Middle and Eastern Districts of the Supreme Court shall hereafter stand and be composed of the following named counties, viz :—

The Western District of—

Allegheny,	Jefferson,	Westmoreland,
Beaver,	Venango,	Washington.
Green,		

The Middle District of—

Adams,	Dauphin,	Franklin.
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The Eastern District of—

Armstrong,	Erie,	Montour,
Bucks,	Elk,	McKean,
Butler,	Fayette,	Northampton,
Bedford,	Forest,	Northumberland,
Blair,	Fulton,	Philadelphia,
Bradford,	Huntingdon,	Perry,
Berks,	Indiana,	Potter,
Cambria,	Juniata,	Pike,
Clarion,	Lawrence,	Schuylkill,
Crawford,	Lehigh,	Somerset,
Carbon,	Lebanon,	Susquehanna,
Chester,	Luzerne,	Snyder,
Cumberland,	Lackawanna,	Sullivan,
Centre,	Lycoming,	Tioga,
Columbia,	Lancaster,	Union,
Clinton,	Mercer,	Wayne,
Clearfield,	Monroe,	Wyoming,
Cameron,	Montgomery,	Warren,
Delaware,	Mifflin,	York.

By virtue of the same Act of Assembly the terms in the respective districts are fixed as follows :—

The term in the Western District shall commence on the first Monday of October, and shall continue four weeks.

The term in the Middle District shall commence on the twenty-first Monday following the first Monday of January, and shall continue one week.

The term of the Eastern District shall commence on the third Monday of November, and shall continue until the commencement of the term for the Middle District.

By virtue of the same Act of Assembly return-days are hereby established for all of the aforesaid counties, as follows :—

For the Western District: The return-days for the counties of Allegheny, Beaver, Green, Jefferson, Venango, Westmoreland and Washington, shall be the first Monday

of October. The last three weeks of the term are hereby assigned to the hearing of all cases in and for the said county of Allegheny.

For the Middle District : The return-day for the counties of Adams, Dauphin, and Franklin, shall be the twenty-first Monday following the first Monday of January.

For the Eastern District : The return-days for the city and county of Philadelphia shall remain as heretofore.

For the other counties of the Eastern District, the return-days shall be as follows :—

For the first Monday of the term, the counties of Cambria, Clarion, Butler and Fayette.

For the second Monday of the term, the counties of Crawford and Mercer.

For the third Monday of the term, the counties of Armstrong, Erie, Forest, Indiana, Lawrence and Somerset.

For the fifth Monday following the first Monday of January, the counties of Lycoming, Centre and Elk.

For the seventh Monday following the first Monday of January, the counties of Lackawanna, Pike, and Wayne.

For the eighth Monday following the first Monday of January, the counties of Berks and Columbia.

For the ninth Monday following the first Monday of January, the counties of Carbon, Lehigh, Monroe, and Northampton.

For the tenth Monday following the first Monday of January, the counties of Bradford, Susquehanna, and Wyoming.

For the fourteenth Monday following the first Monday of January, the county of Luzerne.

For the fifteenth Monday following the first Monday of January, the counties of Schuylkill and Montgomery.

For the sixteenth Monday following the first Monday of January, the counties of Bucks, Clinton, Montour, and Northumberland.

For the seventeenth Monday following the first Monday of January, the counties of Clearfield, Lebanon, Snyder and Union.

For the eighteenth Monday following the first Monday of January, the counties of Bedford, Cameron, Cumberland, Fulton, McKean, Perry, Potter, Sullivan and Tioga.

For the nineteenth Monday following the first Monday of January, the counties of Lancaster and York.

For the twentieth Monday following the first Monday of January, the counties of Blair, Huntingdon, Juniata, Mifflin and Warren.

The fourth week of the term in the Eastern District is assigned to *remanets* from the Western District, and such other cases from the said Western District as the parties may desire to have heard in the Eastern District, preference being given to *remanets*.

Eight weeks of the term are hereby assigned for the hearing of all cases for the city and county of Philadelphia. The first period shall commence on the first Monday of January, and shall continue for five weeks; the second period shall commence on the eleventh Monday following the first Monday in January, and shall continue for three weeks.

To which return-days all writs of error, process, and proceedings in and for the said several counties in the respective districts shall be accordingly and respectively returnable; and the causes from the said several counties shall be heard in the same week to which their writs of error and other process are respectively returnable, excepting as is herein otherwise provided for the counties of Allegheny and Philadelphia.

By order of Court dated May 26, 1882, the return day for Sullivan county was changed from the eighteenth Monday following the first Monday of January to the tenth Monday following the first Monday of January in each year.

NEW RULES WITH REGARD TO RETURN-DAYS.

Supplement to the order of the Supreme Court transferring certain counties from the Middle and Western Districts to the Eastern District, changing the terms in said district, and establishing return-days, made November 25, 1881.

And now, June 1, 1883, it is ordered by the said Court, now sitting at Harrisburg, as follows :

The following counties shall be and are transferred from the Eastern District to the Middle District, viz. : Cumberland and Fulton.

The following counties shall be and are transferred from the Eastern to the Western District, namely : Armstrong, Butler, Cambria, Clarion, Forest, Indiana, Lawrence and Mercer.

The term in the Middle District shall continue two weeks.

The term in the Western District shall continue seven weeks.

The term in the Eastern District shall commence on the first Monday of January, and shall continue until the commencement of the term for the Middle District.

For the Western District the return-days shall be as follows :—

For the first Monday of the term the counties of Beaver, Clarion, Forest, Greene, Jefferson, Venango and Westmoreland.

For the second Monday of the term the counties of Armstrong, Cambria, Lawrence and Mercer.

For the third Monday of the term the counties of Indiana, Washington and Butler.

For the fourth Monday of the term, the county of Alle-

gheny, and four weeks of the term if necessary are assigned for the hearing of cases for the county of Allegheny.

In the Eastern District the return-day for the counties of Erie, Crawford and Fayette shall be the fourth Monday following the first Monday of January. The return-day for the county of Somerset shall be the fifth Monday following the first Monday of January. The return day for the county of Lehigh shall be the sixth Monday following the first Monday of January.

Seven weeks of the term are assigned for the hearing of cases for the city and county of Philadelphia. The first period shall commence on the first Monday of January and shall continue for four weeks. The second period shall commence on the eleventh Monday following the first Monday of January and shall continue for three weeks.

So much of the said order made November 25, 1881, as is hereby altered or supplied, is revoked,

And now January 25, 1885, by virtue of an Act of Assembly of this Commonwealth, approved May 5, 1876, entitled "An Act authorizing the Supreme Court to change and transfer any of the counties of the Commonwealth from any one of the districts of said Court" (P. L. 115), it is hereby ordered by the said Court, now sitting at Philadelphia, in and for the Eastern District thereof, as follows, that the county of Cumberland shall be and hereby is transferred from the Middle District to the Eastern District of said Court.

(Return day for said county made the seventeenth Monday following the first Monday of January.)

And now, June 2, 1887, it is ordered that the return-days for the respective counties in the Eastern District, except the city and county of Philadelphia, shall hereafter be as follows:—

The fourth Monday following the first Monday in January in each year, for the counties of Lehigh and Montgomery.

The fifth Monday following the first Monday in January, for the counties of Chester, Delaware, and Bucks.

The sixth Monday following the first Monday in January, for the counties of Schuylkill and Lebanon.

The seventh Monday following the first Monday in January, for the counties of Lackawanna, Wayne, Pike, and Wyoming.

The eighth Monday following the first Monday in January, for the counties of Berks and Montour.

The ninth Monday following the first Monday in January, for the counties of Northampton, Carbon, and Monroe.

The tenth Monday following the first Monday in January, for the counties of Bradford, Lycoming, Clinton, Cameron, Sullivan, and Susquehanna.

The fourteenth Monday following the first Monday in January for the counties of Luzerne and Columbia.

The fifteenth Monday following the first Monday in January for the counties of Blair, Centre, Clearfield, and Huntingdon.

The sixteenth Monday following the first Monday in January for the counties of Crawford, Erie, and Cumberland.

The eighteenth Monday following the first Monday in January for the counties of Bedford, Fayette, and Somerset.

The nineteenth Monday following the first Monday in January for the counties of Lancaster and York.

The twentieth Monday following the first Monday in January for the counties of Northumberland, Juniata, Mifflin, Union, Snyder, and Perry.*

* The districts are therefore at the present time composed as follows :—

The Western District of

Allegheny,	Clarion.	Lawrence,
Armstrong,	Forest,	Mercer,
Beaver,	Greene,	Venango,
Butler,	Indiana,	Washington,
Cambria,	Jefferson,	Westmoreland.

The Middle District of

Adams,
Dauphin,

Fulton,

Franklin.

The Eastern District of

Bedford,
Berks,
Blair,
Bradford,
Bucks,
Cameron,
Carbon,
Centre,
Chester,
Clearfield,
Clinton,
Columbia,
Crawford,
Cumberland,
Delaware,
Elk,Erie,
Fayette,
Huntingdon,
Juniata,
Lackawanna,
Lancaster,
Lebanon,
Lehigh,
Luzerne,
Lycoming,
Mifflin,
Monroe,
Montgomery,
Montour,
McKean,
Northampton,Northumberland,
Perry,
Philadelphia,
Pike,
Potter,
Schuylkill,
Snyder,
Somerset,
Sullivan,
Susquehanna,
Tioga,
Union,
Warren,
Wayne,
Wyoming,
York.

The term in the Western District commences on the first Monday in October, and continues seven weeks.

The term in the Middle District commences on the twenty-first Monday following the first Monday of January, and continues two weeks.

The Term in the Eastern District commences on the first Monday of January, and continues until the commencement of the term for the Middle District.

The return days fixed by the above rules and amendments are as follows :

For the Western District :

For the first Monday of the term, the counties of Beaver, Clarion, Forest, Greene, Jefferson, Venango and Westmoreland.

For the second Monday of the term, the counties of Armstrong, Cambria, Lawrence and Mercer.

For the third Monday of the term, the counties of Indiana, Washington and Butler.

For the fourth Monday of the term, the county of Allegheny, and four weeks of the term if necessary are assigned for the hearing of cases for the county of Allegheny.

For the Middle District :

The return day for the counties of Adams, Dauphin and Franklin are the twenty-first Monday following the first Monday of January.

For the Eastern District:

Seven weeks of the term are assigned for the hearing of cases for the city and county of Philadelphia. The first period commences on the first Monday of January and shall continue for four weeks. The second period commences on the eleventh Monday following the first Monday of January and continues for three weeks.

For the other counties of the Eastern District, the return days shall be as follows :

The fourth Monday following the first Monday of January in each year, for the counties of Lehigh and Montgomery.

The fifth Monday following the first Monday in January for the counties of Chester, Delaware and Bucks.

The sixth Monday following the first Monday in January for the counties of Schuylkill and Lebanon.

The seventh Monday following the first Monday in January for the counties of Lackawanna, Wayne, Pike and Wyoming.

The eighth Monday following the first Monday in January for the counties of Berks and Montour.

The ninth Monday following the first Monday in January for the counties of Northampton, Carbon and Monroe.

The tenth Monday following the first Monday in January for the counties of Bradford, Lycoming, Clinton, Cameron, Sullivan and Susquehanna.

The fourteenth Monday following the first Monday in January for the counties of Luzerne and Columbia.

The fifteenth Monday following the first Monday in January for the counties of Blair, Centre, Clearfield and Huntingdon.

The sixteenth Monday following the first Monday in January for the counties of Crawford, Erie and Cumberland.

The eighteenth Monday following the first Monday in January for the counties of Bedford, Fayette and Somerset.

The nineteenth Monday following the first Monday in January for the counties of Lancaster and York.

The twentieth Monday following the first Monday in January for the counties of Northumberland, Juniata, Mifflin, Union, Snyder and Perry.

RULES
OF
EQUITY PRACTICE

ADOPTED BY THE

Supreme Court of Pennsylvania,

MAY 27, 1865,

WITH THE REPORT OF THE COMMISSIONERS.

*To the Honorable the Judges
of the Supreme Court of Pennsylvania:*

The undersigned, a committee appointed by this honorable court on the 9th day of March, 1864, to revise and amend the rules of practice in equity cases, and to report to this court,

RESPECTFULLY REPORT—

That in pursuance of the duties of their appointment they have prepared a body of equity rules, of which they submit herewith a copy.

In so doing, the committee beg to point out briefly the more important changes which they have thought it expedient to make in the existing practice. They would observe, at the same time, that, except where such changes have been introduced, they have considered it better to adhere to the language and general scheme of the existing rules.

1. Formal rule days are abolished. Process may issue and rules be taken at any time. On the other hand a sufficient period for appearance to process, or for compliance with the usual rules, is expressly limited in each case. By this means a needless waste of time is obviated.

2. The bill and other pleadings are required to be printed except in two cases: *first*, poverty, certified by counsel; *secondly*, bills for injunction, where, however, a printed copy must be substituted in a few days. The cost of printing is made part of the costs of the case.

3. Subpœnas to appear are abolished. Instead thereof a copy of the bill is to be served on the defendant, with a notice endorsed thereon to appear in fourteen days, and that if he does not the bill will be taken *pro confesso*, and a decree made against him in his absence.

4. Provision is made in case the defendant fails to appear, for a decree *pro confesso* against him, or for an attachment to compel an answer, which seems to have been overlooked in the present rules.

5. The bill is required to be in as brief and succinct form as it reasonably can be, and to be divided into paragraphs, consecutively numbered, omitting the interrogatories and all mere formal parts. The prayer for relief and for special orders, writs or process, is to be also divided and numbered.

6. Interrogatories to defendant are to be filed separately. So the defendant instead of resorting to a cross-bill may file interrogatories to the plaintiff; and

7. Consequently cross-bills for discovery only are abolished. Those for relief are made substantially part of the original proceedings.

8. Supplemental bills, bills of revivor and the like, are dispensed with; and their place is to be supplied by amendments and orders in the original cause.

9. On interlocutory applications, such as for an injunction or receiver, it is provided that either party may take, or require his adversary to take testimony *viva voce* in the presence of the court, subject to cross-examination, as in ordinary cases. This will generally dispense with the use of affidavits, which are demoralizing and unreliable, and at the same time enable the parties to compel the attendance of witnesses by subpoena, which cannot now be done.

10. Instead of a period of three months in which to close testimony, which, in a vast majority of cases, is quite unnecessary, a thirty-days rule is allowed, subject to enlargement on cause shown.

11. Orders for allowing further time are hereafter only to be granted on notice to the other party.

12. Cautionary orders on injunction bills are abolished. At the same time, that which was their only excuse, the rule that injunctions shall only be granted on notice, is done away with. Cases of emergency sometimes occur where there is no time to give formal notice, to prevent irreparable injury, or where the notice would defeat its own purpose. On the other hand, the security which the law requires before the grant of an injunction and the unwillingness of judges to act without notice to the other party except in extreme cases, afford together a sufficient protection to defendants. To this is added a provision that an injunction without notice is made operative only for five days, unless the motion is argued within that time.

13. In the city of Philadelphia, rules and orders to plead or close testimony, which would otherwise expire in the months of July and August, are postponed until September. A vacation, which elsewhere may be only a habit, is here a necessity.

These are the principal alterations which the committee have made. The object as will be seen has been in the main to shorten and simplify equity proceedings ; to make

them less expensive, and at the same time to adapt them to the course of practice and usages which prevail in this State in common law cases. Most of these changes are not untried. They have for a number of years been adopted and in use in England and elsewhere. Other alterations have been made in the existing rules, either to correct their phraseology or to adapt them to recent acts of assembly. Besides this the whole body of rules have been re-arranged, so as to give them a more logical order of succession than they now possess.

The subject of costs has only been incidentally touched, as it did not appear to be within the province of the committee. They would, however, respectfully recommend it to the court as one needing revision.

All of which is respectfully submitted.

GEO. SHARSWOOD,
OSWALD THOMPSON,
ST. GEO. T. CAMPBELL,
GEO. W. BIDDLE,
R. C. McMURTRIE,
FRED. C. BRIGHTLY,
HENRY WHARTON,

Committee.

RULES IN EQUITY.*

RULE I.

Miscellaneous Rules.

§ 1. †The equity side of the supreme court, district courts, and courts of common pleas, shall be deemed always open for the purpose of filing bills, answers and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules and other proceedings, preparatory to the hearing of causes upon their merits.

§ 2. The prothonotary's office shall be open, and the prothonotary shall be in attendance therein daily, during office hours, for the purpose of receiving, entering, entertaining and disposing of all motions, rules, orders and other proceedings, which are grantable of course, and applied for or had by the parties or their solicitors, in all

* The equity rules "having been established by the supreme court under the authority of an act of legislature, have for us the same effect as if they had been embodied in the form of positive law, and oblige us to conform to their requirements."

Philadelphia vs. McManes et. al., 42 L. I., 160 (Allison, P. J., C. P., April 11, 1885.)

The rules in equity cannot be suspended by the court of common pleas nor can that court adopt others inconsistent therewith.

Gibbon's Appeal, 104 Pa. St. 587, (Trunkey, J., January 7, 1884).

The rules require a liberal consideration in favor of the right of parties to notice of every application affecting their interest.

Gibbon's Appeal (Supra).

[† The original jurisdiction of the supreme court is greatly circumscribed by the Constitution of 1874, Art. V. Sec. 3, and the nisi prius and district courts abolished by sections 6, 21.]

causes pending in equity, in pursuance of the rules hereby prescribed.

§ 3. *In all cases in equity instituted in the supreme court when sitting in the eastern district, the nisi prius judge, unless otherwise ordered by the court on cause shown, shall take cognizance, and shall hear and decide the same, and make all necessary decrees as fully as the supreme court in banc might or could do, subject to revision according to the ninth section of the Act of 26th of July, 1842. This nisi prius shall be open for equity cases on all juridical days.

§ 4. When any case in equity, within the meaning of the first section of the act of 8th April, 1852, comes into the supreme court in banc for revision, it shall be certified from district to district until determined, as required by the act aforesaid. All such cases, instituted in other districts than the eastern district, shall be disposed of by the supreme court in banc, without a preliminary reference to the judge at nisi prius, and shall be certified for that purpose from district to district, as the said act requires.

RULE II.

Process and Appearance.

§ 5. No suit shall be deemed pending until the bill be actually filed in the prothonotary's office. Every bill shall be printed, except in the cases specially provided for in these rules; and the prothonotary shall endorse thereon the time of filing the same.

§ 6. Unless otherwise provided by law, the defendant or defendants shall be required, in the first instance, to appear and answer the exigency of the bill, by the service upon each defendant therein named, of a printed copy thereof, on which shall be endorsed a notice in the follow-

[*See note to sec. 1, preceding page.]

ing form : "To the within-named defendant, (here the name of the defendant, upon whom service is to be made, must be inserted). You are hereby notified and required, within fourteen days after service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the Supreme Court of Pennsylvania, in and for the Eastern District, (or as the case may be,) to the within bill of complaint of the within-named (here insert the name of complainant), and to observe what the said court shall direct. Witness my hand at (here insert the place where the court is held, the date of notice, and name and place of business of plaintiff's solicitor).

"NOTE.—If you fail to comply with the above directions by not entering an appearance in the prothonotary's office, within fourteen days, you will be liable to have the bill taken *pro confesso*, and a decree made against you in your absence."

§ 7. Guardians *ad litem* to defend a suit may be appointed by the court, or by any judge thereof, on petition, for infants or other persons, who are under guardianship, or otherwise incapable to sue for themselves ; all infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*, subject, however, to such orders as the court may direct, as to security or otherwise, for the protection of such infants and other persons.

§ 8. Service upon a defendant shall be by giving him a printed copy of the bill, with a notice endorsed thereon in the form prescribed in these rules, or by leaving such copy and notice at his dwelling house, with an adult member of his family or the family in which he resides. The court, or a law judge thereof, may direct how service shall be made in special cases.

§ 9. In cases where husband and wife are defendants, service of a copy of the bill and notice to appear shall be made on each of them. Service on non-resident defendants

shall be made in the mode prescribed by the acts of assembly relating thereto.

§ 10. Service of the bill and notice to appear, on a corporation, shall be effected in the mode prescribed by law for the service of a writ of summons upon such corporation. Where the commonwealth is a necessary party, service shall be made in the manner prescribed by the act of 6th April, 1844.

§ 11. Whenever the court shall make an order under the provisions of the Act of 6th April, 1859, for a service upon a non-resident defendant, without the commonwealth, such service shall be by delivery to him of a copy of the bill, such as is provided for in these rules, together with a copy of the order authorizing such service ; and in such case the form of subpoena shall be similar, in substance, to the notice to appear prescribed by these rules, but so varied as to require the defendant to cause an appearance to be entered for him, on or before the time fixed in such special order.

§ 12. Whenever the court shall direct service by publication, under the provisions of the act of 6th April, 1859, a copy of such order, together with a statement of the substance and object of the bill, petition or other proceeding, shall be published in such one or more newspapers, and at such times as the court shall by special order direct, having regard to the probable residence of the defendant, and affidavit filed stating all the knowledge or information of the complainant or deponent in reference to such defendant's place of residence.

§ 13. Upon filing the bill the prothonotary shall enter the suit upon his docket as pending in the court, and shall state the time of entry ; and upon the filing of an affidavit of the due service of notice to appear upon the defendant or defendants, shall enter the same upon the docket. The appearance of the defendant, either personally or by solicitor, shall be by a paper filed and endorsed by the prothon-

otary, with the time of filing the same, and shall be noted on the margin of the equity docket. If the defendant shall not cause an appearance to be entered for him within the time limited for that purpose, the plaintiff may, at his election, enter an order as of course in the cause, that the bill be taken *pro confesso*, or proceed by attachment as is hereafter provided by Section 29.

RULE III.

Pleadings Generally.

§ 14. All bills, interrogatories, demurrers, pleas, answers to bills, and to interrogatories, and amendments of pleadings, where such amendments exceed one hundred consecutive words, shall be printed on white sized paper of a convenient size. Amendments shall be printed on one side only of the paper. Each party appearing by separate counsel shall be entitled to ten copies of all such pleadings. The amount paid for printing shall be allowed as costs of the cause.* This rule shall not apply where counsel shall certify that his client, by reason of poverty, is unable to pay for the same. In which case, instead of ten printed copies, each party shall be entitled to one fairly written copy of all pleadings, interrogatories, etc., and in such case any other party may print such papers, and be allowed for the expense at the termination of the cause, or when the court shall see fit to order the payment by the other party. The prothonotary shall not permit any such unprinted pleadings to be filed, saving with such a certificate, and

* § 14. The defendant in a bill of discovery will be allowed the cost of printing his answer. *Mills vs. McLaughlin*, defendant and *Magee* garnishee. 27 W. N. C. 573 (C. P. No. 1, March 28, 1891, Biddle, J.) This rule does not require that the examiner's report be printed and without a general or special order, there is no authority for allowing the cost of printing such report, as costs. *Rogers vs. Williams*, et. al., Leg-Gaz. Rep., 418 (Sharswood, J., Dec. 30, 1871, *S. C. Nisi Prius*).

saving also bills for injunction where counsel shall certify that there has not been time to print the same. And such injunction bills shall be withdrawn and deemed finally dismissed as of course, unless within twenty days after filing the same, printed copies are filed and served.

RULE IV.

Structure of Bill.

§ 15. Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in *hæc verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it do, it may, on exceptions, be referred to a master by any judge of the court for impertinence or scandal, and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a law judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference, or the court or any law judge thereof may decide thereon without a reference, unless the case shall require it.

§ 16. Every bill, in the introductory part thereof, shall contain the names of all the parties, plaintiffs, and defendants, by and against whom the bill is brought. The form in substance shall be as follows: In the (style of court). Sitting in equity. Between A B, plaintiff, and C D, defendant. To the Honorable the Judges of the said court. Your orator complains and says, &c.

§ 17. The bill shall be divided into paragraphs consecutively numbered, and shall contain a succinct statement of the facts upon which the plaintiff asks relief, and,

at his option, the facts which are intended to avoid an anticipated defence, and such averments as may be necessary under the rules of equity pleading to entitle the plaintiff to relief, and the prayer for relief and for special orders, writs, or process, which shall also be so divided and numbered. The combination clause, the interrogatories, and the allegation of want of remedy at law and similar formal averments, shall be omitted.

RULE V.

Parties.

§ 18. Where no account, payment, conveyance, or other direct relief is sought against a party to a suit not being an infant, the party upon service of the notice upon him, need not appear and answer the bill, unless the plaintiff especially requires him so to do, by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer, he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

§ 19. Where infants or persons not *sui juris*, are parties, the fact shall be specially stated in the bill, so that the court, before or after the service of process, may take order thereon as justice may require.

§ 20. Where persons without the jurisdiction are proper or necessary parties, this fact shall be stated in the bill, and they may be brought in by service when they come within the jurisdiction of the court, or under a special order as provided by the acts of assembly.

§ 21. In all cases where it shall appear to the court that persons who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties by reason of their being out of the jurisdiction of the court, capable

otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in their discretion, proceed in the cause without making such persons parties ; and in such cases the decree shall be without prejudice to the rights of the absent parties.

§ 22. Where the parties on either side are very numerous, and cannot without manifest inconvenience and oppressive delays in the suit be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interest of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

§ 23. In all suits concerning real estate which is vested in trustees, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate ; and in such cases it shall not be necessary to make the persons beneficially interested in such real estate or rents and profits parties to the suit, but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

§ 24. In suits to execute the trusts of a will it shall not be necessary to make the heir-at-law a party ; but the plaintiff shall be at liberty to make the heirs-at-law a party, where he desires to have the will established against them.

§ 25. In all cases where the plaintiff has a joint and several demand against several persons, either as prin-

cipals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable. But the defendant may at once proceed by a bill in the nature of a cross-bill against such party as is liable jointly with him, and such party shall be permitted to make himself a party to the original cause, and defend the same, and the proceedings in the original cause shall, after the service of such cross-bill, be conclusive as to such other party, and if he shall appear thereto, be conducted as if he had been made a party thereto in the first instance.

§ 26. If a defendant shall, at the hearing of a case, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description the parties to whom the objection applies, the court, if it shall think fit, shall be at liberty to make a decree, saving the rights of the absent parties.

§ 27. Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the equity docket, in the form or to the effect following, that is to say: "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it think fit, shall be at liberty to dismiss the bill.

§ 28. The parties to a suit may at any time before decree, by agreement in writing, without special motion, consent that the bill be dismissed, with or without costs, as may be stipulated ; and upon payment of the costs due to the officers of the court, such agreement shall be entered upon the docket, and the suit shall be thereupon fully ended and discontinued.

RULE VI.

Pleas, Demurrers and Decrees Pro Confesso.

§ 29. The plaintiff shall be entitled immediately after the defendant's appearance is entered, to a rule on defendant to be entered of course in the prothonotary's office, to file his plea, demurrer, or answer to the bill within thirty days after service of notice of such rule ; in default of compliance therewith the plaintiff may at his election enter an order as of course in the cause, that the bill be taken *pro confesso*. And in such case, and also where the bill is taken *pro confesso* for want of an appearance, the cause shall be proceeded in *ex parte*, and the case may be put upon the next equity argument list, and the matter of the bill may be decreed by the court when there reached in its order, if the same can be done without an answer, upon the allegations in the bill, which without further proof shall be taken as admitted ; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom unless upon filing his answer or otherwise complying with such order as the court or a law judge thereof may direct as to pleading to or fully answering the bill within a period to be fixed by the court or judge, and undertaking to speed the cause ; or it shall be in the option

of the plaintiff, when such rule to plead, answer or demur shall have been served as aforesaid and not complied with, or on default of appearance by the defendant within the time limited therefor, instead of taking the bill *pro confesso*, to have process of contempt to compel an answer.

§ 30. When the bill is taken *pro confesso*, and the court shall have proceeded to a decree as aforesaid, such decree so rendered shall be deemed absolute, unless the court or a law judge thereof shall, within fourteen days after the service of notice of such decree on the defendant, set aside the same and give the defendant time for filing an answer upon cause shown. And no such motion shall be granted, unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct for the purpose of speeding the cause.

§ 31. The defendant may, at any time before the bill is taken for confessed, or afterwards with the leave of the court, demur or plead to the whole bill or to part of it, and he may demur to part, plead to part, and answer as to the residue; but in every case in which the bill specially charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination and the facts on which the charge is founded.*

§ 32. No demurrer or plea shall be allowed to be filed to any bill, unless supported by affidavit that it is not interposed for delay; and if a plea, that it is true in point of fact. Demurrers shall be substantially in the form follow-

§ 31. "But he may not plead or answer, and demur also, to the whole bill or to the same part of the bill. If he demur to part, and answer to the same part, both cannot stand. The demurrer in such case is overruled. With much more reason is this the case when there is a demurrer to the whole, and an answer to the whole." *Barry's Appeal*, 119 Pa. St., 413 (Paxson, J., March 26, 1888).

ing: "The defendant demurs to the whole bill," "or to so much of the bill, or discovery or relief," stating the particulars and assigning the reasons or grounds in detail.

§ 33. The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

§ 34. If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument within ten days after service of the same, the defendant may set it down for argument on five days' notice.

§ 35. No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to, or because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

§ 36. If, upon the hearing, any demurrer or plea shall be allowed, the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

§ 37. If, upon the hearing, any demurrer or plea is overruled, unless the court shall be satisfied that it was intended for vexation and delay, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, at such period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof the bill shall be taken against him, *pro confesso*, and the matter thereof proceeded in and decreed accordingly; and such decree shall also be made when the court deems the plea or demurrer to have been for vexation and delay, and to have been frivolous or unfounded.

RULE VII.

Answers and Cross-bills.

§ 38. The defendant shall make answer to all the material allegations of the bill. The answer of a defendant must be in the first person, and divided into paragraphs, numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct allegation. The rule, that if the defendant submits to answer, he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might, by plea or demurrer, protect himself from such answer or discovery. And the defendant shall be entitled in all cases, by answer, to insist upon all matters of defence in law (not being matters of abatement, or to the character of the parties, or of matters of form), to the merits of the bill, of which he may be entitled to avail himself by a demurrer or plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover, upon filing a demurrer or plea in bar and an answer in support of such plea, touching the matters set forth in the bill to avoid or repel the bar, or defence.—Thus, for example, a bona fide purchaser, for a valuable consideration, without notice, may set up the defence, by way of answer, instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.*

§ 39. Specific interrogatories to defendants shall not be included in the bill, but may be filed separately. In like manner, any defendants shall be entitled to file interrogatories to any of the plaintiffs after he shall have put in his own answer to the bill. In either case, they may be filed

§ 38. A defendant may by answer protect himself against discovery, through a denial of complainant title. *Perry vs. McKinley*, 5 Clark, 326 (Thompson, J., C. P., Phila., 1854).

at any time before the taking of testimony is begun, and shall be deemed, with the answers, part of the pleadings. By special order on notice, they may be filed after testimony has been taken, and answers required at such time as the court or a law judge may order. They shall be divided as conveniently as may be, and numbered. Where there is more than one defendant or plaintiff, the particular interrogatories which each is required to answer shall be specified by a note at the foot of the paper. A copy shall be served on each party required to answer them, or his counsel, and an order of course, to answer within ten days after such service, and on neglect to answer any interrogatory and serve a copy of such answer within that time, the plaintiff or defendant, as the case may be, shall be entitled to move for an attachment to compel an answer.*

§ 40. A plaintiff or defendant shall be at liberty to decline answering any interrogatory, or part of an interrogatory, when he might have protected himself by demurrer from answering the subject-matter of the interrogatory; and he shall be at liberty so to decline, notwithstanding he shall answer other interrogatories, from which he might have protected himself by demurrer, and the plaintiff or defendant may, on forty-eight hours notice, set down the matter for a hearing before any law judge of the court, as on an exception to the answer for insufficiency. But where the interrogatories are not fully answered, and no reason is assigned for the omission, the particular objection must be pointed out by exception, to be filed and served at least ten days before the hearing of such exception. The plaintiff or defendant shall be at liberty, before answers to

§ 39. A defendant in a bill of discovery in aid of an issue at law, cannot by denying the truth of the principal fact upon which is based plaintiff's right to recover, decline to answer interrogations which would tend to prove the truth of the fact so denied. *Bains vs. Goldey*, 35 Pa. St., 51 (opinion of Sharswood, P. J., of District Court of Philadelphia, affirmed by Sup. Ct., 1860).

the interrogatories are filed, or pending exceptions, to file or require a replication, and proceed to take testimony without waiver of his right to such answers, or of his exceptions to the answers.

§ 41. Cross-bills for discovery only shall not be allowed, but the defendant shall be at liberty instead thereof, to file interrogatories to the plaintiff as above provided. In other cross-bills no further reference shall be made to the matters contained in the original bill than shall be necessary, but the same may be treated as if incorporated therein. The rules regulating the form of bills shall apply to cross-bills. If no new parties are introduced, service of a copy of the cross-bill on the counsel of the plaintiff in the original bill shall be sufficient. Where other persons are made parties, the service shall be in the manner provided in original bills, a copy of such original bill being served together with the cross-bill, and such new parties shall be entitled to have copies of the answer to the original bill as required for the plaintiff.

§ 42. Answers and affidavits may be sworn to before any person authorized to administer oaths under the laws or usages of this commonwealth, or of any other state, territory or country, where the oath is taken.

RULE VIII.

Exceptions to Answers.

§ 43. After answers are filed to the interrogatories, the plaintiff shall be allowed twenty days from the service of a copy of such answers on the plaintiff's counsel, to file in the prothonotary's office exceptions thereto, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court or a law judge thereof; and if no exceptions shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

§ 44. Where an exception shall be filed to the answer to any interrogatory for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same, and file an amended answer within ten days from service of a copy of such exception on the defendant's counsel, the plaintiff shall forthwith order the prothonotary to set the matter down for a hearing on the next day thereafter appointed for such causes, before a law judge of the court, and shall give notice of such order to the opposite party or his solicitor. And if he shall not so set the same down for a hearing, the exception shall be deemed abandoned, and the answer shall be deemed sufficient; provided, however, that the court or any law judge thereof may, for good cause shown, enlarge the time for filing an exception or for filing an amended answer in their or his discretion, upon such terms as they or he may deem reasonable. Exceptions shall be printed, and the expense of printing such as are sustained shall be allowed as costs, to be immediately recovered.

§ 45. If, at the hearing, any exception shall be allowed, the defendant shall be bound to put in a full and complete answer to the particular interrogatory, within ten days, unless the time be enlarged by order of the court, otherwise the plaintiff shall of course be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exception; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court or of a law judge thereof, upon his putting in such answer and complying with such other terms as the court or judge may direct.

§ 46. No order shall be made by any judge for referring any bill, answer, or pleading, or other matter, or

proceeding depending before the court for scandal or impertinence, unless exceptions are taken in writing, and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent ; nor unless the exceptions shall be filed within ten days after the service of the same upon the party excepting or his counsel, and such exceptions may be set down for hearing by either party on forty-eight hours notice, or such other notice as the court may direct to the opposite party.

RULE IX.

Replications.

§ 47. Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto within ten days thereafter, unless he shall set the cause down on bill and answer ; and in all cases where the general replication is filed, the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to a rule upon him to reply within ten days after notice of such rule ; on failure to file such replication with notice to the defendant's counsel, the plaintiff shall be deemed to have abandoned his right to traverse the matters alleged in the answer. The replication shall be in substance thus : "The plaintiff joins issue on the matters alleged in the answer."

§.48. No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same upon motion to the court or a law judge thereof in vacation.

RULE X.

Amendments, Supplemental Bills, &c.

§ 49. The plaintiff shall be at liberty, as a matter of course, to amend his bill in any matters whatsoever, before answer, plea, or demurrer to the bill, but he shall, without delay, give the defendant notice of such amendment, and all rules taken by the plaintiff in the case shall be suspended until such notice is given.*

§ 50. After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any law judge of the court to amend his bill within twenty days thereafter. But after the replication filed the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon an order of a law judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or * that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

§ 51. If the plaintiff, so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the prothonotary's office, and serve a copy on the counsel of all other parties to the cause, who appear by counsel within the time appointed for making such amendments, he shall be considered to have abandon-

§ 49. It is too late to amend a bill in equity, after bill, answer, replication, reference to a master and examination of witnesses. *Dougherty vs. Murphy*, 1 Legal Chr. Rep., 280 (Schuylkill Co., Pershing, J.).

§ 50. The word "or" is to be read "and." *Toomey et ux. vs. Hughes*, 8 C. C. Rep., 304, C. P. 4 (Thayer, P. J., November 2, 1889).

ed the same, and the cause shall proceed as if no application for any amendment had been made.

§ 52. In every case where, after answer filed, an amendment of the bill is made in such particulars as to vary the case or the grounds of relief, the defendants shall be at liberty to demur or plead to the amended bill or to the amendments, as if no answers had been filed, and the answer to the original bill shall not, unless the defendant fails to put in another answer when required, be used except as an admission of the facts therein stated, subject to explanation by the answer subsequently filed. Answers to amendments may be required at such times as the court or a law judge upon notice shall direct, and shall be in other respects subject to the rules regulating answers to the original bill.

§ 53. After an answer is put in, it may be amended as of course, in any matter of form, or by filling up a blank, or correcting a date, or reference to a document, or other small matter, and be re-sworn, at any time before replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the court or a law judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the court or the judge granting the same may, in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

§ 54. Whenever the circumstances are such as to require a bill of revivor, supplemental bill, or bill in the nature of either or both, or where additional or different parties are required to be joined, the same shall be made

by way of amendment or addition to the original bill, and copies of such amendments or additions being served on the parties to the original bill, or their counsel, on the record, shall entitle the plaintiff to proceed as on an original bill, after service. Where a new party is joined, a copy of the original bill and the amendment shall be served as is provided for in the case of original bills. But, where the personal representative of a deceased party is properly required to be joined, it may be done by stating on the record the fact of the death, and the grant of letters to such representative, and by service of notice of such statement on such representative; and the cause, without more delay, shall proceed as if such representative had been originally a party, allowing him ten days to appear.

RULE XI.

Evidence.

§ 55. An order to take the testimony of ancient, infirm and going witnesses *de bene esse* before any alderman or justice of the peace of the respective county, or other person therein, authorized by law to take depositions in other cases, may be entered by either party in the prothonotary's office of course, at any time after the service of process stipulating a reasonable notice to the adverse party; so of an order for a commission to any place within the State of Pennsylvania, more than forty miles distant from the county seat of the respective county, or to any other state or territory, or to foreign parts. But in case of a commission, the interrogatories must be filed in the prothonotary's office at the time, and written notice of this last order and of the names of the commissioners must be served on the adverse party at least fifteen days before the commission issues, in order that he may file cross-interrogatories, or nominate commissioners on his part, if he shall deem it

eligible : *Provided*, That depositions taken before magistrates in the method prescribed by this rule, shall only be allowed to be read in evidence on the hearing of the cause, in case the same facts shall appear before the examiner appointed to take testimony in the cause after it is at issue, and be certified by him to excuse the production of such witnesses before him as are necessary for the introduction of depositions taken *de bene esse* on trials by jury in the same courts, or if taken by the commissioner before the cause is at issue, under this rule, it shall appear by affidavit at the hearing that the witnesses so examined were aged, infirm, or going out of the country, or that any of them was a single witness to a material fact.

§ 56. Upon the return of the commission executed, the same may, at the application of either party, be opened by any one of the judges of the court, in term time or vacation, or by the prothonotary ; and the prothonotary shall give notice to the parties of the return of any commission, and of the filing of depositions taken before any alderman, justice of the peace, or examiner, and the parties shall, within ten days after service of such notice upon them respectively, enter exceptions in writing, if they have any, to the form of the interrogatories or the manner of the execution of the commission, and the taking of the depositions, or be forever precluded from the benefit of such exceptions, which exceptions when so taken may be put down for hearing by either party giving forty-eight hours notice to his adversary thereof, or such other notice as the court may direct.

§ 57. The last of the interrogatories to take testimony shall be stated in substance, thus : "Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in

question in this cause? If yea, set forth the same fully and at large in your answer.”*

§ 58. On all interlocutory applications, as for an injunction, or the appointment of a receiver, either party shall be at liberty to produce his witnesses for examination in open court at the hearing of the application, as to all such matters as could be proved by their affidavits, subject to cross-examination as in other cases, or, upon reasonable notice, to require the other party to produce his witnesses for examination in open court, unless sufficient cause be shown to the contrary.†

§ 59. The method of taking testimony, except in cases provided for in the foregoing rules, shall be as follows: After the cause is at issue, the court shall appoint an examiner at the request of either party who may first make application, which examiner shall cause such witnesses as either party may name to him to come before him on a reasonable day or days, to be appointed by him, of which he shall give notice to the parties; for the enforcing the attendance of which witnesses, either party may have subpœna or subpœnas, returnable before such examiner, to be enforced by the usual process of contempt. The examination shall be conducted by the counsel of the

*§ 57. Unless the final interrogatory is in the form prescribed by this rule, the deposition will be suppressed.

An interrogatory, “Do you know any other matter or thing which would tend to the advantage of the plaintiff to prove in his case?” etc., is not correct. *Smith vs. Cokefair*, 1 C. C. Rep., 48 (Northampton co., Schuyler, P. J., November 16, 1885).

But when the objection is not made within the proper time (ten day's after notice of filing.—Sec. 56), the deposition will be admitted. *Davis Shoe Co. vs. Insurance Co.*, 138 Pa. St., 73 (Paxson, C. J., November 3, 1890).

† This rule was suspended until further orders by the supreme court, 29th June, 1866, reserving to the judge the right to enforce the same at his discretion.

parties *viva voce*, and the answers of the witnesses shall be reduced to writing by the examiner, and the questions also, if necessary to the understanding of the answer or if it be required by either party. The testimony of both parties shall be taken before the same examiner, and the defendant shall not be compelled to proceed with the taking of his testimony, until the plaintiff has finished, or declared he has none to take, nor shall the plaintiff be compelled to proceed with the rebutting testimony until the defendant has completed the testimony on his part ; * but the court may, upon the special application of either party, upon cause shown, appoint an additional examiner before whom the party making such application may proceed to take his testimony, notwithstanding the pendency of the proceeding of his adversary before the examiner first named.

§ 60. Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him. All affidavits and depositions shall be taken and expressed in the first person of the deponent ; and shall be divided into paragraphs, and each paragraph, as nearly as may be, confined to a distinct portion of the subject.

§ 61. Either party may enter a rule as of course on his adversary to close the taking of his testimony within thirty days after notice of such rule ; any testimony taken after thirty days notice of such rule shall not be read in evidence at the hearing of the cause. But it shall be in the discretion of the court to enlarge the time on the application of the party against whom such order may have

§ 59. An examiner appointed under these rules, has no right to limit or restrict the examination or cross examination of witnesses. *Philadelphia vs. McManes, et. al.* 42 L. I., 160 (Allison, P. J., C. P. 1, April 11, 1885).

been obtained, upon sufficient cause being shown ; and no such rule shall be entered against a party while, by the provisions of the 59th section, such party is not bound to begin until his adversary has closed.

RULE XII.

*Masters.**

§ 62. The courts may appoint standing masters in chancery in their respective jurisdictions, and they may also appoint a master *pro hac vice*, in any particular case. The compensation to be allowed to every master in chancery for his services in any particular cause, shall be fixed by the court in its discretion, having regard to all the circumstances thereof ; and the compensation shall be charged upon and borne by such of the parties in the cause, as the court shall direct. The master shall not retain his report as security for his compensation ; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.†

*§ 62. The power of the lower court to appoint or remove a master is unquestioned, but the proceedings must be in accord with the rules in equity prescribed by the supreme court. A rule to remove a master is not of course. His removal without notice to all parties is irregular. Sec. 73 is applicable in such a case. *Gibbons Appeal*, 104 Pa. St., 587 (Trunkey, J., Jan'y. 7, 1884).

†§ 62. This section in so far as it allowed an attachment for the master's fee is illegal, being contrary to the act of 12th July, 1842. P. L., 339.

Pierce's Appeal, 103 Pa. St., 27 (Trunkey, J., Apr. 16; 1883) and cases there cited. This was a proceeding based on a contract, and it was held that the costs were of the same nature. But if the decree is founded upon a tort or breach of duty by a trustee, the costs imposed follow the wrong act. If the party is liable to arrest to enforce the payment of money, or the performance of a specific thing, he is, also, for the costs taxed against him in the judgment or decree. *Church's Appeal*, 103 Pa. St., 263 (Trunkey, J., May 7, 1883).

§ 63. Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance, or for whose benefit the reference is made, shall cause the same to be presented to the master for a hearing within ten days after the day when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.*

§ 64. Upon every such reference it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or in his discretion to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay;† and either party shall be at liberty to apply to the court or a law judge thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the court or judge the reasons for any delay.

§ 65. The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the

* § 63. It is not sufficient under this rule to merely give the name of the commissioner. "The true construction of this rule of court demands such designation of the commissioners as will to a reasonable certainty inform the party served where they may be found." *Patterson vs. Greenland, et al.*, 37 Pa. St., 510 (Woodward, J., Jan'y 7, 1861).

† § 64. If a master refuses to proceed with the taking of testimony because of non-payment for his services, the court will order him to file his report. *Huddy vs. Caldwell*, 6 W. N. C., 448 (Thayer, P. J., C. P. 4, January 25, 1879).

cause, upon oath, touching all matters contained in the reference ; and also to require the production of all books, papers, writings, vouchers, and all other documents applicable thereto ; where, by the principles of courts of chancery, the production of them may be compelled, and also to examine on oath *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate by the prothonotary ; and also to direct the mode in which the matters requiring evidence shall be proved before him ; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him which he may deem necessary and proper to the justice and merits thereof, and the rights of the parties.

§ 66. All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor, and any of the other parties who shall not be satisfied with the account so brought in, shall be at liberty to examine the accounting party, *viva voce*, or upon interrogatories before the master, or by deposition, as the master shall direct.

§ 67. The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examination shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court, if necessary.

§ 68. All affidavits, depositions, and documents which have been previously made, read, or used in the court, upon any proceeding in any cause or matter, may be used before the master.

§ 69. No exception will be received to the report of any master, unless the party excepting has filed the same with the master, by whom the report has been made, whose duty it shall be, on such exception being filed, to re-examine the subject and amend his report, if in his opinion such exceptions are in whole or in part well founded. And in order to give all parties in interest an opportunity of entering such exceptions, no master shall file his report until ten days after he has notified to the parties his intention so to do on a day designated, and giving them an opportunity of having access to such report. On the hearing of the question of confirming or setting aside the master's report, the party excepting thereto shall be confined to the exception made by him before the master, according to the previous requisition of this rule ; reserving to the court, however, the power of committing the report again, should justice require it. On the return of the master's final report, or at such time as may be established by the rules of the particular court, either party may set down the cause for hearing on the next equity argument list, provided that at least four days shall intervene ; but if no exceptions be filed as thus provided, the report shall be confirmed at the expiration of twenty days succeeding the day on which it shall have been filed.

RULE XIII.

Interlocutory Orders, Generally.

§ 70 Any judge of the supreme court, or district courts, or any law judge of the courts of common pleas, as well in vacation as in term, may at chambers make and direct all such interlocutory orders, rules, and other proceedings preparatory to the hearing of causes upon their merits, in the same manner and with the same effect as the court could make and direct the same in term, reasonable notice of the same being first given to the adverse party or his

solicitor, to appear and show cause to the contrary, at such time thereafter as shall be assigned by the judge for the hearing thereof.

§ 71. All motions, rules, orders, and other proceedings made and directed at chambers or at the prothonotary's office, whether special or of course, shall be entered by the prothonotary in his equity docket, on the day on which they are made and directed, and notice thereof given to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases in which personal notice on the parties is not otherwise specially required. The equity docket shall be kept by the prothonotary at his office, and shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. All notices shall be in writing.

§ 72. All motions and applications in the prothonotary's office for the issuing of *mesne* and final process, (except process of sequestration and of attachment to enforce and execute decrees;) for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso*; for filing exceptions, and for other proceedings which do not by the rules hereafter prescribed require any allowance or order of the court, or of any judge thereof, shall be deemed motions and applications grantable of course by the prothonotary of the court; but the same may be suspended, altered, or rescinded by any law judge of the court upon cause shown.

§ 73. All motions for rules or orders, and other proceedings which are not grantable of course, or without notice, shall be made on application to the court or a law judge at chambers, and entered in the equity docket, and shall be heard at such time thereafter as shall be assigned

therefor by the court or judge the time of the making the application; and if the adverse party or his solicitor, after notice thereof, shall not then appear, or shall not show good cause against the same, the motion may be heard by any law judge of the court, *ex parte*, and granted, as if not objected to, or refused, in his discretion.*

§ 74. No order allowing further time shall be made without written notice of the application for such order to the counsel on record of the opposite party; and any order which does not recite such notice, or that the counsel attended at the hearing, may be disregarded.

§ 75. Cautionary orders in injunction bills shall not be made, nor shall any injunction be allowed except security be given according to law. But whenever an injunction shall be granted without previous notice to the opposite party, it shall be taken to be dissolved if the motion be not argued within five days after such notice given, unless otherwise specially ordered by the court or a law judge thereof.

§ 76. In the city of Philadelphia all rules, or orders to plead or to close testimony, which, according to the time prescribed in the foregoing rules, would otherwise expire on any day of the months of July and August, shall be deemed and taken to expire on the same day of the month of September following.

§ 77. If, on any interlocutory proceeding, a party shall be ordered to pay the costs thereof, such costs shall be taxed by the prothonotary, and payment thereof may be

§ 73. A rule to remove a master is not of course. Notice of such rule must be given to all parties. *Gibbons' Appeal*, 104 Pa. St., 587 (Trunkey, J., Jan'y. 7, 1884).

As to what rules are of course see Mitchell on Rules and Motions, p. 14.

enforced by attachment * and sequestration, or the party to whom the said costs are directed to be paid may, at his option, have a common law writ of execution for the recovery thereof; and the party against whom such order is made shall not be allowed to take any further step in the cause until payment of such costs.

RULE XIV.

Decrees, and Final Process.

§ 78. In drawing up decrees and orders, neither the bill nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceedings, shall be recited or stated in the decree or order; but the decree and orders shall begin in substance as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz: " (Here insert the decree or order.)

§ 79. The decree shall be drawn by the solicitor of the party in whose favor it is, who shall, unless otherwise herein provided, serve a copy thereof on the solicitor of the adverse party, with notice of the time, which shall not be less than three days thereafter, when the same will be submitted to the court; but the court may direct the decree to be entered forthwith, without further notice, upon the same being pronounced, should they think the justice of the case requires it, or when the solicitor of the opposite

§ 77. An attachment cannot issue to collect the costs where the proceedings is founded on a contract. *Pierce's Appeal*, 103 Pa. St., 27 (Trunkey, J., April 16, 1883).

But an attachment to collect the costs may issue if the decree is founded on a tort, or breach of duty by a trustee. *Church's Appeal*, 103 Pa. St., 263 (Trunkey, J., May 7, 1883).

party is present and does not object to the form thereof. If the opposite party, where notice is required to be given to him, shall not deem such draft of decree in conformity with the intentions of the court, he may file exceptions thereto before the day of hearing designated in such notice, which shall be submitted with the draft of the decree on the day so appointed, and thereupon, the court approving of the draft, or correcting the same in conformity with such exceptions, or otherwise, the prothonotary shall enter it in his equity docket, and from thenceforth it shall become the act and decree of the court.

§ 80. If the decree or order be merely for the payment of money, the party in whose favor it is made shall be entitled to have a minute thereof (without waiting for the draft of a more formal decree) entered in the equity docket and placed in the usual form of entering judgments in the judgment index of the common law side of the court.

§ 81. Unless otherwise provided by law or by these rules, or specially ordered by the court, a writ of attachment, and if the defendant cannot be found, or it may otherwise be thought proper by the court, a writ of sequestration or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court; but the same shall not be issued, unless upon motion and allowance by the court or a law judge thereof.

§ 82. When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be at liberty to apply forthwith to the court or to a law judge, for an order for a writ of assistance, upon the allowance of which the prothonotary shall immediately issue the same.

§ 83. Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the same court in suits at common law in actions of debt or assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or delivering up of deeds or other documents, the decree shall prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice ; and upon affidavit of the plaintiff, filed in the prothonotary's office, that the same has not been complied with, the court, if sitting, or any law judge during vacation, may direct the issuing of a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged unless upon a full compliance with the decree and the payment of costs; or upon a special order of the court or of a law judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration may, upon motion, be ordered by the court or a law judge thereof, to be issued against his estate upon the return of *non est inventus*, to compel obedience to the decree.

§ 84. Every person not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause ; and every person not being a party to the cause against whom obedience to an order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order, as if he were a party in the cause.

§ 85. Clerical mistakes in decrees or decretal orders, or error arising from any accidental slip or omission, may be corrected by order of the court or a law judge there-

of, upon petition, without the form or expense of a rehearing.

RULE XV.

Rehearing.

§ 86. Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party, or by some other person. A rehearing may be granted at any time within the discretion of the court; but where the decree has been executed, parties who have acted on the faith of such decree shall not be prejudiced by such decree being reversed or varied.

RULE XVI.

General Provisions.

§ 87. The courts may make any other and further rules and regulations for the practice, proceedings, and process, *mesne*, and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

§ 88. In all cases when these rules or those prescribed by the other courts do not apply, the practice of the courts shall be regulated by the present practice of the high court of chancery in England,* so far as the same

§ 88. Where a bill of discovery is filed praying for the production of books, and an answer is filed in which defendant admits the possession of the book, the plaintiff, following the practice of the High Court of Chancery in England, is entitled as of course to the order for inspection. *Reed vs. Stevenson, et al.*, 6 W. N. C., 173 (Thayer, P. J., C. P. 4, Phila. co., Oct. 21, 1878).

An appeal from a decree in Chancery in England does not suspend proceedings, unless a special order to that effect has been made by the Chancellor. *Barker, et al. vs. Hartman Steel Co., limited*, 6 Pa. C. C. Rep., 183 (Beaver co., Wickham, P. J., Dec. 10, 1888).

may reasonably be applied consistently with the local circumstances and local convenience of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

§ 89. These rules shall take effect from and after the first day of July, 1865. It shall be the duty of the prothonotary of the supreme court for the eastern district forthwith to send a certified copy thereof to the prothonotaries of the middle, northern, and western districts, and to the prothonotary of each district court and court of common pleas throughout the State.

RULES OF COMMON PLEAS.

GENERAL RULES.

Adopted by the several courts of common pleas of the county of Philadelphia, for the arrangement of business.

I.—*Attorneys.*

All attorneys of the late district court and court of common pleas, who were, on the second day of January, 1875, in good standing on the rolls of both of the said courts, are admitted to practice as attorneys of these courts.

II.—*Distribution of Old Business.*

All actions and proceedings in the courts of common pleas, or district courts of the city and county of Philadelphia, heretofore brought to or commenced during the December term of any year shall be transferred to the court of common pleas No. 1.

All actions and proceedings of March term of any year, to the court of common pleas No. 2.

All actions and proceedings of the June term of any year, to the court of common pleas No. 3.

All actions and proceedings of the September term of any year, to the court of common pleas No. 4.¹

All actions and proceedings transferred from the court of nisi prius, which have been heretofore brought to or commenced during the January term of said court of any

¹ See *Lee vs. Barnum*, 1 W. N. C. 265; *Elliott vs. Mullin*, id. 314; *Schneider vs. Spaeder*, id. 485; assigned estate of Baker, 2 W. N. C. 198; *Lorenz vs. Betz*, id. 274; *City vs. Wister*, id. 274; *Betz vs. Lorenz*, id. 335; *Johnson vs. Stokes*, id. 353; *Bank vs. Parrish*, 5 W. N. C. 57.

year, shall be transferred to the court of common pleas No. 3; and all actions or proceedings heretofore brought to or commenced during July term of said court of nisi prius of any year, shall be transferred to the court of common pleas No. 4.

All attachment executions pending on the fourth day of January, 1875, are transferred to the courts having jurisdiction of the cases originated in the terms to which such attachment executions issued.

III.—*Distribution of New Business.*

All actions at law, proceedings in equity, and all other proceedings of every nature and kind whatsoever,² hereafter originated in the courts of common pleas, shall be distributed, apportioned and assigned by the prothonotary to the several courts of common pleas in the following manner :

The first 1000 cases to the court of common pleas No. 1.

The second 1000 cases to the court of common pleas No. 2.

The third 1000 cases to the court of common pleas No. 3.

The fourth 1000 cases to the court of common pleas No. 4.

The fifth 1000 cases to the court of common pleas No. 1.

And so on, alternately, the several cases and proceedings being assigned to each court in succession in the manner aforesaid. And the distribution, apportionment and assignment so made by the prothonotary in obedience to this rule, shall be conclusive upon all parties to such actions or proceedings; and the court to which the said cases shall be respectively distributed and assigned by the prothonotary shall, as provided by the constitution, have exclusive jurisdiction thereof.

The prothonotary shall mark upon each præcipe, or

2. This rule extends only to writs or process whereby actions or other proceedings are originated. 32 L. I., 4.

other original application or paper which may come into his office, the court to which the said suit or proceeding is assigned, and shall enter the same in the proper docket of the said court.

Alias and *pluries* writs, writs of execution, and of *scire facias* to revive judgment, writs of *scire facias* on mechanics' claims and against garnishees, and all other writs or process of every kind, which are founded upon³ and ancillary to some other action, judgment, claim or proceeding, shall be issued from the same court, and be entitled as of the same term and number of said original.

The prothonotary shall keep a separate general appearance docket for each court, wherein shall be entered all actions and proceedings of every kind assigned to the said courts respectively, except mechanics' claims and proceedings thereon.

All subsequent entries relating to any cases, and all ancillary proceedings by execution or otherwise shall be docketed in the same docket, and entitled in the same term and number as the original action or proceeding whereon they are founded.

Mechanics' claims shall be kept in the mechanics' lien docket of the proper court, and all proceedings relative thereto shall be entered in the same docket, and entitled as of the same term and number.

3. Debt upon bail bond in error is founded upon the original suit within the meaning of this rule, and should be brought in court where the original action was commenced. *Given vs. Johnson*, 16 W. N. C., 424 (C. P. 3, Sept. 21, 1885). So also debt on recognizance of bail in error. *Wahl vs. Wanamaker*, 8 W. N. C., 306 (C. P. 1, Feb. 25, 1880). *Lukens vs. Bryson*, 9 W. N. C., 540 (C. P. 1, Allison, J., Oct. 4, 1880). So also *scire facias* on recognizance of bail in error. *Keyser et al. vs. Dialogue et al.*, 4 W. N. C., 11 (S. C., Feb. 5, 1877).

But a suit against a late partner commenced after the suit against the other partner should not be entitled of the same term and number. *Spooner vs. Schollenberger*, 17 W. N. C., 424 (C. P. 2, March, 1886).

Whenever there shall be pending in different courts of common pleas of this county, any actions or proceedings at law or in equity, which it would be convenient for the administration of justice, to have tried or determined by the same court, the court in which the action or proceeding last brought shall be pending may, upon motion of either party before trial, or final hearing, with notice to the other side, and upon cause shown, order the said action or proceeding last brought to be transferred by the prothonotary to the court in which said prior action or proceeding shall be pending, and thereupon the said last mentioned court shall be vested with exclusive jurisdiction over the said action or proceeding in like manner as if said action or proceeding had been originally commenced therein.⁴

All bills (in equity,) the object of which is the enjoining of pending proceedings at law or in equity in any of the courts of common pleas of the county, shall be assigned by the prothonotary to the court, in which such proceedings at law or in equity shall be pending, without reference to the assignment of current business at that time under these general rules (of these courts).

All writs of habeas corpus shall be made returnable the following Friday before the judge sitting in the court of

4. A proceeding to remove a trustee and a bill to compel the same trustee to account should properly be heard in the same court. *In re Daniel*, 28 W. N. C., 198 (Arnold, J., C. P. 4, June 9, 1891).

The latter of two actions brought to recover instalments of annuity, was transferred to the court in which the first suit was commenced. *Griffith vs. Church-Extension Society*, 42 L. I., 170, (C. P., 2, 1885.)

Action against sheriff for false return should be brought in the court where the original action was commenced. *White vs. Taylor*, 13 W. N. C., 27 (C. P. 1., Biddle, J., March 17, 1883).

A purchaser at a sheriff's sale, of the interest of one partner, must proceed in the same court which possessed control of the sale, in a bill for account by the other partner. *Bryan vs. Daily*, 37 L. I., 322 (C. P. 1. Allison, J., July 3, 1880).

quarter sessions, unless the judge allowing the writ shall otherwise direct.

When an appeal is taken under the provision of the act of June 13, 1874 (P. L., 283), the said appeal, together with the affidavit required to accompany the same, shall be filed in the court of common pleas, the judges of which compose the court of quarter sessions, to which the petition for a jury shall have been assigned under the rules; and the said courts of common pleas shall have exclusive jurisdiction of all proceedings upon such appeal.

RULES

OF THE

Courts of Common Pleas.

RULE I.

*Admissions for the purpose of Evidence.*⁵

§ 1. In all actions instituted on any bill, note, bond, recognizance, deed, mortgage, assignment or other instrument of writing for the payment of money, of which a copy or a statement of the place of record authorized by the several acts of assembly, shall have been filed before or within two weeks after the return of the original process, and, in actions in which such copy or statement shall have been filed at or before the time of filing of the narr and served therewith, it shall not be necessary for the plaintiff, at the trial, to prove the drawing, acceptance, endorsement⁶ or execution thereof, or demand non-payment or non-acceptance; and protest and notice thereof⁷; but the same

5. Courts have no authority to establish rules which alter the rules of evidence. *Doe vs. Wenn*, 5 Pet., C. C. Rep. 223. See also *Mills vs. Bank of U. S.*, 11 Wheat., 431.

6. This rule applies to an action against the endorser of a promissory note. *Miller vs. Weeks*, 22 Pa. St., 89 (Woodward, J., October 17, 1853); *Clegg vs. Mintzer*, 38 L. I., 451 (C. P. 1, Biddle, J., December 3, 1881).

7. As to the authority of the court of common pleas to make such a rule, see *McCloy vs. Maffatt's Adm'r*, 59 Pa. St., 344, (Williams, J., November 16, 1868); *McGovern & Fisher vs. Hoesback*, 53 Pa. St., 176 (Woodward, C. J., November 5, 1866); *Reese vs. Reese*, 90 Pa. St., 89 (Trunkey, J., May 5, 1879); *Mattern vs. McDivitt*, 113 Pa. St., 336 (Trunkey, J., October 4, 1886).

This rule was adopted in 1885, being an amendment of a former rule, upon the same subject. It applies in actions commenced by a person

shall be taken to be admitted,⁸ unless the defendant, or some person for him or her, by affidavit⁹ filed at or before the time of filing his or her plea, shall have denied that such bill, note, bond, recognizance, deed, mortgage, assignment or other instrument of writing was duly¹⁰ drawn, accepted, endorsed or executed, or that demand was duly made and payment or acceptance refused, and protest duly made, and that notice thereof was duly given.

§ 2. In all actions by or against partners, it shall not be necessary for the plaintiff on the trial to prove the partnership, but the same shall be taken to be admitted as alleged on the record, unless one or more of the defendants, or some person for him or them, shall, at or before the filing his or their plea, file an affidavit denying the existence of the partnership in relation to the subject matter

either individually or in a representative capacity. Under a similar rule admitting as evidence such portions of the affidavit of claim as are not denied by the affidavit of defense the courts of common pleas of Allegheny county, held the affidavit of claim of an administrator suing in his representative capacity to be admissible. *Schupp vs. Schupp*, 17 W. N. C., 236 (S. C., January 4, 1886). The rule is applicable also in cases where the defendant is a natural person or a corporation. *Batt vs. Penna. Globe Gas Light Co.*, 43 L. I., 86 (Thayer, P. J., C. P. 4, February 20, 1886).

8. *Brock vs. Watson*, 48 L. I., 328 (C. P. 2, Pennypacker, J., August 11, 1891).

9. Denial in affidavit of defence is sufficient. *Hogg vs. Orgill*, 34 Pa. St., 344 (Thompson, J., 1859).

10. In *Ball vs. Pennsylvania Globe Gas Light Company*, (supra), is a discussion by Thayer, P. J., of C. P. 4 (February 20, 1886), on this portion of the above rules. "The word 'duly' was introduced upon a revision of the rules and means regularly, properly, legally, upon proper authority. The object of its introduction was plainly to provide for a case in which although the signatures might be genuine, a question might be made, whether they were properly affixed to the instrument, and whether the defendant whom the instrument purported to bind had given authority for its execution. In such cases the object of the rule is to put the defendant to an affidavit denying that the instrument was 'duly' executed that is, lawfully and upon sufficient authority."

of the action, and stating to the best of his or their knowledge and belief whether there is any such partnership and who are parties to it.¹¹

RULE II.

Affidavit.

§ 3. Attorneys holding commissions as notaries public, or who are authorized to administer oaths, shall not take nor attest the affidavit of any party represented by them, and all affidavits taken in violation of this rule shall be treated as null.¹²

RULE III.

*Affidavit of defence.*¹³

§ 4. Whenever the plaintiff has not filed in the office of the prothonotary, within one week after the return of the

11. The failure of the defendant to file an affidavit denying the partnership, with his plea estops him from denying the partnership at the trial of the cause. *Muller vs. Haggerty, et. al.*, 2 W. N. C., 427 (C. P. 2, March 19, 1876). An affidavit denying liability only but not partnership estops the defendant also. *Prescott vs. Buckwalter*, 1 W. N. C., 58 (*Per Curiam* S. C., November 2, 1874). If the plea denying partnership is not sworn to or an affidavit filed, the defendant will not be permitted to give evidence at the trial denying partnership, even though his affidavit of defence denies the partnership. *Ranie vs. Gordon, et. al.*, 5 W. N. C., 292 (C. P. 3, March 20, 1878). Contra, *Adams vs. Kehoe*, 1 W. N. C., 232 (C. P. 2, February 20, 1875.) In *Steinbeisser vs. Corbion*, 9 W. N. C. 528 (Thayer, P. J., C. P. 4, March 7, 1881), an affidavit denying partnership was allowed to be filed *nunc pro tunc* after issue.

12. See *Geyn vs. Clark*, 14 W. C. N., 432.

13. Judgments for want of an affidavit of defence, originated in an agreement of the Philadelphia bar, in 1795; (3 W. N. C. 567) were soon after authorized by rules of court, and received legislative sanction by the act of 28 March, 1835 (P. L., 89). Prior to the procedure act of 1887 (sec. 5 P. L., 271) there was not express legislative authority for a judgment for want of a sufficient affidavit of defence. The act of 1835 and its supplements spoke only of judgments for want of an affidavit and the practice for half a century rested undisturbed on the incontrovertible judicial deduction that an insufficient affidavit was legally no affidavit at all. Mitchell, J., in *Stedman vs. Poterie*, 139 Pa. St., 100, (Jan. 5, 1891).

There is no rule in the common pleas authorizing the plaintiff to take

original process, a copy¹⁴ of the bill, note, bond, book entries or instrument of writing required by the second section of the act of 28th March, 1835, or an affidavit of loan or advance. required by the fourteenth section of the act of 11th March, 1836, but has filed the

judgment for the amount admitted to be due, and to proceed for the remainder. *Blydenstein vs. Haseltine*, 140 Pa. St., 120 (*Per curiam*, Feb. 16, 1891.) In Philadelphia county if the plaintiff take judgment for the portion admitted to be due, he cannot proceed thereafter to recover the balance. *Blydenstein vs. Haseltine* (supra).

The act of 1887, does not repeal the old laws requiring affidavits of defence. (1 Brew. Practice § 16); but the "rules of court allowing judgment to be taken for part of a claim, did not receive such legislative sanction as practically incorporated them in the act or took them out of the control of the courts. All that the act does is to mention them in such manner as to avoid the implication that they are abolished. Rules upon the subject, old or new, are still within the authority and control of each court in regard to its own practice." *Marlin vs. Waters*, 127 Pa. St., 177; *Stedman vs. Poterie* (supra).

An affidavit of defence means an affidavit upon the merits. *McCavney vs. McCamp*, 1 Ash. 4 (Rush, J., 1812).

The present tendency may be said to be decidedly in favor of requiring an affidavit satisfactory upon all the essential points of the alleged defence. Mitchell on Motions and Rules, 56.

Rules regulating judgment for want of an affidavit of defence apply to actions begun by foreign attachment. *Paff vs. North Bangor Co.* 5 Pa. C. C. Rep., 543 (C. P. Northampton co., Schuyler, P. J., July 16, 1888).

To require an affidavit of defence the affidavit of claim must be sufficient. *Garrard vs. Co., of Allegheny*, 2 Pitts., 338, (Williams, A. J., August 23, 1862). The filing of an affidavit is no waiver of an objection to the sufficiency of the plaintiff's claims. *Hutchinson vs. Woodwell*, 107 Pa. St., 509, (Mercur, C. J., January 5, 1885). Where the plaintiff is entitled to judgment unless the defendant files an affidavit of defence on a certain day, the defendant is entitled to the whole of such day to file the affidavit. *Duncan vs. Bell, Johnston, Jack & Co.*, 28 Pa., 516, (Armstrong, J., 1851).

If judgment may be taken for want of an affidavit of defence at a certain time, it may be entered at any time after. *Slocum vs. Slocum*, 8 Watts 367, (Kennedy, J., July 1839).

14. If the copy is filed on the first Monday after return day it is within the week. *Ulrich vs. Stohrer*, 12 Phila., 189.

same within two weeks after the return day¹⁵ he shall give written notice thereof to the defendant or his attorney at least forty-eight hours before applying to the court for judgment for want of an affidavit of defence, and in default of such notice the plaintiff shall not be allowed to enter judgment.¹⁶

§ 4a. A copy of the affidavit of defence must be served on the plaintiff or his attorney, within forty-eight hours after the filing thereof.

RULE IV.

Agreements of Counsel.

§ 5. All agreements of attorneys, touching the business of the court,¹⁷ shall be in writing, otherwise they shall be considered of no validity.

15. A copy filed on the second Monday after return day is in time and judgment may be taken if the plaintiff has taken no other steps in the case to mislead the defendant or put him to additional costs. *Hey vs. Clymer*, 16 W. N. C., 3, (C. P., 2. Mitchell, J., June 27, 1885).

16. Where the plaintiff fails to give notice of the filing of the copy he is not entitled to judgment. *Bergdoll vs. Toth*, 14 W. N. C., 211 (Ludlow, P. J., C. P. 3, February 8, 1884).

17. "This rule relates to the ordinary routine of practice, and is designed to exclude unseemly disputes and contradiction among gentlemen of the bar in the presence of the court. It has no application whatever to agreements made to facilitate or guide a sheriff in the execution of writs in his hands." Woodward, J., in *Reamer's Appeal*, 18 Pa. St., 510 (June 28, 1852); see also *Powell vs. Tobias*, 2 Philadelphia, 274, Sharwood, J.; but where the justice of a case requires, a verbal agreement will be enforced. See *Oliver vs. Met. Nat. Bk, et al.*, 3 Pennypacker, 74, where C. P. 2 of Alleghany co., struck off a judgment, entered against garnishees in an attachment execution for want of an answer, upon the proof of a verbal agreement by counsel for the plaintiff not to take judgment pending certain proceedings which had not terminated at the time of judgment, and until after notice, which action was affirmed by a divided court.

RULE V.

Appeals.

§ 6. In all cases of appeal by defendant from judgment of a magistrate where, on the calling of the case for trial, defendant does not appear to prosecute his appeal, and the plaintiff is present and ready for trial, the court, may, on motion of plaintiff's attorney, affirm the judgment of the magistrate: *Provided*, that when there shall have been an award of arbitrators filed upon such appeal, judgment of affirmance of award shall be entered, and when the award shall have been for a sum of money, the judgment shall be for that sum together with the interest thereon from the day of filing the award, or the day named in the report.¹⁸

§ 6a. In all cases of appeal by the plaintiff from the judgment of a magistrate, the plaintiff shall serve a written notice of the appeal upon the defendant, stating the court, term and number of the suit, and file an affidavit of such service ten days before taking a judgment by default.¹⁹

RULE VI.

Assignees' and Trustees' Accounts.

§ 7. A notice of the filing of all accounts of assignees, trustees and committees, shall be published once a week for four full weeks consecutively in the Legal Intelligencer, and once a week for four full weeks in two daily

18. The above rule was held constitutional by the supreme court in *Lloyd vs. Foudy*, 4 W. N. C., 225 (*Per Curiam*, February 24, 1877), it remarking "that the courts have a right by rule to require vigilance in the suitors, otherwise their business could not be carried on." See also *Kuhn vs. Kisterbock*, 6 Wh., 166 (*Per Curiam*, January 18, 1841); *Frost vs. Roatch*, id., 359 (Huston, J., April 3, 1841).

19. This section is new being adopted in 1885. Judgment stricken off for non-compliance with this rule. *Howard vs. Achuff*, 19 W. N. C., 334 (C. P. 3, February 12, 1887).

newspapers of the city of Philadelphia, setting forth that the account will be allowed by the court at a certain time to be stated in the notice, unless cause be shown to the contrary; and upon due proof being made of such publication, and if no exceptions have been filed, the account shall be confirmed absolutely.²⁰

RULE VII.

Attachments.

§ 8. Writs of attachment under the thirty-fifth section of the act of 16th June, 1836, entitled, "An act relating to executions," may be made returnable at any return day, as in case of writs of summons.

§ 9. In cases of attachment execution, where the defendant interposes a defence, he shall set forth the grounds thereof specifically, by affidavit, before or at the time of filing his plea; and in case he shall not file such affidavit the plea shall, on motion, be stricken off.

§ 10. When any attachment execution shall have issued upon any judgment, the garnishee or defendant, after the return day of such writ of attachment, may enter a rule on the plaintiff as of course to file his interrogatories in twenty days after service of notice of such rule, and in case of default in filing such interrogatories a judgment of *non pros.* may be entered by the court on motion, and such judgment when entered shall operate to annul and defeat such attachment.²¹

20. Notice of a petition for reconveyance of assigned estate after payment of creditors should by analogy be advertised the length of time required by this rule for notice of filing accounts. *In re* assigned Estate of Harris, 2 W. N. C., 335 (C. P. 2, Nov. 10, 1872.)

21. This rule is within the power of the court to make, and is not inconsistent with the 56 sec. of Act 13 June, 1836 (P. L. 17). *Dougherty vs. Thayer*, 78 Pa. St., 172 (*Per curiam*, March 29, 1875). But a standing rule of court requiring the garnishee in attachment execution to answer interrogatories is irregular and contrary to the 56 sec. of the Act of 1836. *Ringwalt vs. Bundle*, 59 Pa. St., 51 (Strong, J., May 27, 1868).

RULE VIII.

Attorneys.

§ 11. It shall be the duty of every attorney of these courts to register with the prothonotary, the name, age and place of residence of every person studying the law under his direction ; and the time of clerkship shall be computed from the date of such registry.

§ 12. No person shall hereafter be registered as a student at law until he shall have undergone an examination on all the branches of a good English education by the board of examiners, or a committee thereof, and shall have produced and filed with the clerk of the court a certificate signed by all the examiners who were present at his examination, that he is sufficiently prepared and qualified to commence the study of the law.

The applicant must give one week's notice in writing to the secretary of the board, of his desire to be registered, before he shall come before them for examination.

§ 13. No person shall be permitted to practice as an attorney of this court, except upon the following conditions :

First.—He shall be a citizen of the United States, and of full age.

Second.—He shall have served a regular clerkship in the office, and under the direction of a practicing attorney²² of this, or some other court of this Commonwealth, for three years ; the last year of which clerkship shall have been passed in the office, and under the direction of a practicing attorney residing within the city and county of Philadelphia.

22. Serving a clerkship to a judge of the supreme court or to the president judge of the courts of common pleas is sufficient. *Comm. ex rel Brackenbridge vs. Judges* 1 S. & R., 187 (Tilghman, C. J. & Yeates, J., Oct. 1814).

Third.—He shall have undergone an examination before the board of examiners, appointed for such purpose, and shall produce and file with the prothonotary, at the time when his admission is moved for, a certificate signed by all the examiners who were present at his examination, that he is sufficiently qualified for admission to the bar, and that they have received satisfactory evidence, in writing, of his good moral character, which evidence of moral character shall also be at the same time produced and filed as aforesaid.

§ 14. Persons already admitted to practice in other courts of this commonwealth, may, at the discretion of this court, be admitted without an examination, on the production of a certificate, by the presiding judge of the court of common pleas of the county wherein such person has been last admitted and practiced, of the good moral character of the applicant for admission. No person shall be admitted without the examination and registries before mentioned, who has studied law in the county of Philadelphia, and has procured his admission elsewhere as a mere preliminary to his admission to this court.

§ 15. Attorneys from other states may be admitted after a residence of two years within the state, the last year of which residence shall have been passed within the city and county of Philadelphia, upon producing satisfactory evidence of their admission into the supreme or superior court of the state from which they came, and a certificate signed by the chief justice or presiding judge of such court, that they are of good standing at the bar, and of good moral character.

§ 16. Attorneys at law from other states upon producing satisfactory evidence of their admission into the supreme or superior court of the state from which they came, and of their having practiced in some one or more of the courts of record of that state during seven years or

more, may be admitted to practice at the bar of this court, upon the recommendation of the board of examiners thereof.

§ 17. All attorneys from other courts applying for admission to practice in these courts shall in the first instance present their papers to the board of examiners, which board may notwithstanding any other rule, exercise their discretion regarding examination of the applicants, and shall report on the propriety of the admission of such attorneys.²³

§ 18. Any citizen of the United States, of full age, who shall have been graduated bachelor of laws by the University of Pennsylvania, after the course of study required in the university, may be admitted to practice as an attorney if he shall have complied with the rule now in force as to preliminary examination, and been registered for one year in the prothonotary's office as a student of law in said university, by the dean of the law faculty thereof.

§ 19. Any attorney who shall hereafter be stricken from the rolls of any of the courts of Philadelphia county, shall be thereby disqualified from practising in all the other courts, unless the court making the order shall, in its decree, recommend that the punishment be limited to the said court. Any attorney who shall be convicted of an infamous or immoral offence, shall be thereby disqualified from practising as an attorney in this court.

§ 19½. Every attorney now, or hereafter to be, admitted to practice in these courts, who has not an established office for the conduct of his practice within the county, shall register in the office of the prothonotary, in a roll to be kept for that purpose, his name and the address of an office within the county, or a post office address. And such office shall be deemed to be the office of such

23. This rule is nullified by the Act of May 19, 1887 (P. L. 131).

attorney, and a service thereat of all papers, notices and letters, as required by law to be served, shall be deemed a personal service upon such attorney. If a post office address only is registered, then the deposit in the post office at Philadelphia of a registered letter, directed to the registered post office address, shall be deemed equivalent to a personal service. In default of the registration, as herein provided for, a deposit with the prothonotary of any paper, notice or letter, as aforesaid, shall be deemed equivalent to a personal service.

RULE IX.

Auditors and Auditors' Reports.

§ 20. Auditors shall be members of the bar.

§ 21. All motions for appointment of auditors, examiners, masters, commissioners, appraisers, etc., must be reduced to writing and given to the clerk of the court.

§ 22. In all cases where the proceeds of any sheriff's sale shall be brought into court for distribution, and the claims upon the said fund shall be referred to an auditor for adjustment, public notice of the time and place of hearing shall be given by the auditor by advertisement made twice successively in the *Legal Intelligencer*, published in Philadelphia, and also every other day, five times, in one daily newspaper of the city of Philadelphia. In such notice aforesaid, all persons shall be required to make their claims before such auditor or be debarred from coming in upon such fund.

This section shall apply to the accounts of assignees, committees, trustees, etc.

§ 23. In cases referred as aforesaid to an auditor, it shall be the duty of any person desiring an issue to be formed, to reduce his request in writing, with an affidavit

that there are material facts in dispute, setting forth the nature and character thereof, and to present the same to the auditor within forty-eight hours after the hearing by the auditor has been concluded ; and it shall be the duty of the auditor forthwith to make report to the court of the presentation of such written request to him, annexing said request and affidavit to such report.

§ 24. No exception shall be received to the report of any auditor unless the party excepting has filed the same with the auditor by whom the report has been made, whose duty it shall be, on such exception being filed, to re-examine the subject and amend his report, if, in his opinion, such exceptions are, in the whole or in part, well founded. And in order to give all parties in interest an opportunity of entering such exceptions, no auditor shall file his report until²⁴ ten days after he has notified the parties of his intention so to do, on a day designated, and giving them an opportunity of having access to report.²⁵

And on the hearing of the question of confirming or setting aside any auditor's report, the party excepting thereto shall be confined to the exception made by him before the auditor according to the previous requisition of this rule ; reserving to the court, however, the power of recommitting the report should justice require it.

If no exception be filed the report shall be confirmed *nisi*, of course, upon filing, and confirmed absolutely one week thereafter.

24. The word "until" includes the day named in the auditor's notice. *In re* assigned estate of Samuel Croft, 14 W. N. C., 437 (C. P. 2, April 5, 1884).

25. If the exceptions are filed after the time fixed by the rule and not specially allowed for good cause the exceptions filed will not be considered by the Court below nor by the supreme court on appeal. *Riegel's Est.*, 133 Pa. St., 38 (*Per Curiam*, Feb. 18, 1890).

RULE X.

Bail.

§ 25. No bail shall be required in actions of trespass *vi et armis*, in actions for libels, slanderous words, malicious prosecution, conspiracy or false imprisonment, unless an affidavit of the cause of action be made and filed before the issuing of the writ.

§ 26. In all actions of trover and conversion, the affidavit to hold to bail shall fully set forth the circumstances under which the defendant has possessed himself of the goods, the particulars of which they consist, and the value of them, and in what manner the defendant has converted them to his own use.

§ 27. The prothonotary shall issue no *capias ad respondendum* endorsed with bail, in more than five hundred dollars, without a special allocatur by one of the judges.

§ 28. No attorney or sheriff's officer, bailiff or other person, concerned in the execution of process, shall be permitted or suffered to become special bail in any action or suit unless by leave of the court.²⁶

§ 29. Exceptions to bail under the act of Assembly of 13th June, 1836, relating to the commencement of actions, must be made in writing and filed with the prothonotary; and notice thereof in writing shall be given by the plaintiff, within forty-eight hours from the filing of such exceptions.

26. Where a sheriff becomes surety upon a recognizance for an appeal from an award of arbitration, it is error to strike off the appeal, regular in other respects, without a rule on appellant to perfect his recognizance. *Kerr vs. Martin*, 122 Pa. St., 436 (Hand J., October 22, 1888). When an attorney becomes bail in an appeal, the proper course is not to move to quash, but to order the entry of new bail. *Short vs. Rudolph*, 1 Pitts., 50 (Lowrie, C. J., 1853). Court of common pleas No. 3, held that the rule did not apply to bail before a magistrate. *Gardy vs. Moffit*, 14 W. N. C., 438 (Ludlow, P. J., April 26, 1884).

§ 30. Notice of the justification, addition or substitution of bail, must be given in writing to the plaintiff or his attorney at least forty-eight hours before the time designated in the notice for such justification, addition or substitution ; and the notice shall specify the name of the bail, his residence and occupation and the property owned by him, which is to be offered as security.

§ 31. A rule to show cause of action and why the defendant shall not be discharged on common bail must be moved within six days from the return day of the process. Such rule may be heard and decided by a single judge at such time and place as he may appoint.

RULE XI.

Bills of Discovery.

§ 32. Bills of discovery in aid of proceedings at law shall be filed in the court in which the action at law is pending, and if the defendant in such bill be a non-resident, the complainant may apply by affidavit setting forth the place of residence, or supposed residence of the defendant, and thereupon, he shall be entitled to a rule to show cause why the defendant should not, within a time to be fixed at the hearing of the rule, answer the bill, or in default thereof, that an order be made in the proceedings at law for a judgment of non-suit in case the plaintiff at law shall be defendant in the bill, or that the plaintiff may read the bill in evidence on the trial of the cause, in the case the defendant at law is also defendant in the bill.

Service of the rule may be made on the attorney of record in the proceeding at law, and a copy of the affidavits shall be served, together with the rule ; and if, at the expiration of the time allowed for putting in an answer, no answer shall be filed, or no sufficient answer, the rule for non-suit, or for the admission of the allegations, shall be made absolute, unless reasons to the contrary be then shown..

RULE XII.

Bills of Exceptions.

§ 33. In every case where a bill of exceptions is tendered, the same shall be prepared in form, and presented to the judge within ten days after the verdict.

§ 34. In case of a non-suit under the seventh section of the act of 11th March, 1836, the bill of exceptions shall be presented within ten days from the entry of the non-suit.²⁷ In case of reserved points, the party against whom the verdict is entered, shall prepare and present his bill within ten days from the verdict; but in case a verdict shall be set aside or reduced upon a reserved point, the party against whom such decision is made, shall prepare and present his bill of exceptions within ten days from such order.

§ 35. In every case of a bill of exceptions, it shall be the duty of the party presenting the bill, within twenty days thereafter, to have the same settled by the judge before whom the case was tried, on forty-eight hours notice,²⁸ with a copy of the bill served on the opposite party; otherwise the judge shall not be required to seal the same.²⁹

RULE XIII.

Board of Examiners.

§ 36. The board of examiners shall hereafter consist of ten members of the bar, one of whom shall, according to seniority of appointment, retire at the end of each month except July and August. In his place a new member shall be appointed on the first Monday of each month except August and September, in turn by the several

27. See *Smith vs. Bank*, 2 W. N. C., 65; application to file bill *nunc pro tunc* allowed.

28. See *Reichenbach vs. Ruddach*, 121 Pa. St., 18 (Paxson, J., October 1, 1888).

29. Mandamus will not lie to compel a judge to sign a bill of exceptions. *Drexel vs. Man*, 6 W. & S. 343 (Gibson, C. J., December, 1843.)

courts of common pleas and the orphans' court of this county. The chairman of the board shall be the oldest member according to the date of admission to the bar, who shall, however, have served two months on the board. The secretary of the board shall be the youngest member, who shall have so served two months on the board. Subject to the approval of the court, the board may prescribe a course for the examination of applicants for admission as attorneys.*

* The Court has approved the following course of study :

COURSE OF STUDY—OBLIGATORY.

Introduction to Robertson's Charles V.
 Blackstone's Commentaries. (Sharswood's Edition.)
 Kent's Commentaries.
 Story, Adams or Bispham on Equity.
 Greenleaf on Evidence, Vol. I.
 Stephen on Pleading.
 Constitution of the United States.
 Acts of Congress relating to the Judiciary.
 Bankrupt Act.
 Constitution of Pennsylvania.
 Rules of Equity Practice.
 Troubat and Haly's Practice.

ACTS OF ASSEMBLY IN PURDON'S DIGEST, RELATING TO

Actions Personal.	Frauds and Perjuries.
Actions Real.	Ground Rents.
Amendment.	Habeas Corpus.
Assignments.	Intestates.
Bills of Exchange.	Joint Tenancy.
Bond,	Judgments.
Crimes,	Landlord and Tenant.
Contract of Decedents.	Limitation of Actions.
Decedent's Estates.	Liens.
Deeds and Mortgages.	Marriage.
Defalcation.	Orphans' Court.
District Court.	Partition.
Dower.	Promissory Notes.
Ejectment.	Real Estate.
Equity.	Register and Register's Court.
Estates Tail.	Replevin.
Execution.	Trespas.
Factors.	Trustees.
Foreign Attachment.	Wills.

§ 37. No examination of a student of law for admission to practice shall take place, except at a meeting of said board, when six of the examiners shall be requisite to constitute a quorum.

§ 38. All applications for examination, subject to the existing rules of court, shall be made to the chairman of the said board, whose duty it shall be to direct the secretary to summon the said board to meet at the earliest convenient time for the examination of the applicant, and to give written notice to him of the time and place of holding the said meeting.

§ 39. It shall be the duty of said board to keep regular minutes of their proceedings and to hand over the said minutes to their successors duly appointed as above provided; and no inspection, copy or certificate of said minutes, or any part thereof, shall be allowed or given, except upon the order of the court, on motion to that effect.

§ 40. No action shall be had by the board of examiners on any application for admission to the bar, unless notice shall have been given of such application by publication in the *Legal Intelligencer* for four weeks immediately preceding their action.

COURSE OF STUDY—RECOMMENDED.

Smith on Contracts.	Starkie on Evidence, Vol. I.
Williams on Real Property.	Wharton's Criminal Law.
Greenleaf on Evidence,	Vols. II. and III.

ACTS OF ASSEMBLY IN PURDON'S DIGEST, RELATING TO

Aliens.	Feme Sole Traders.
Attorneys at Law.	Interest.
Charters.	Limited Partnerships.
Collateral Inheritances.	Lunatics and Habitual Drunkards.
Criminal Procedure.	Mechanics' Liens.
Divorce.	Practice.
Equitable Plaintiffs.	Verdict.
Evidence.	

RULE XIV.

Certiorari.

§ 41. In all cases of certiorari, the particular exceptions intended to be insisted on must be filed two days before the first argument day, and in default thereof, the judgment below shall be affirmed of course ; the assignment of general errors is insufficient and void.

§ 42. It shall be the duty of the party suing out a writ of certiorari, to cause the record to be returned two days before the first argument day ; in default of which the certiorari will be dismissed. Rules on magistrates to return writs of certiorari, directed to them in due season, will be granted, if applied for, on the regular motion days.

RULE XV.

Charters of Incorporation.

§ 43. All petitions for charters of incorporation and for amendments shall be filed with the prothonotary, and notices thereof shall set forth the particular court to which application is to be made, giving the term and the number of the proceeding and the time when it is to be heard.

§ 43½. In all cases in which application shall be made for a charter, excepting when otherwise ordered by the court, the said application shall be referred to a master, who shall carefully inquire and report to the court concerning the lawfulness of the intended application, and its being or not being injurious to the community.

It is further ordered that the sum of \$50 shall be deposited with the prothonotary, upon the filing of each application, to cover the expense of such inquiry and report.

Committees. See Auditors and Auditors' Reports.

RULE XVI.

Costs.

§ 44. In cases where the plaintiff resides out of the State at the time of suit brought,³⁰ or subsequently removes therefrom,³¹ in *qui tam* actions, in suits on administration

30. To determine the residence "the question is, can you serve him with process?" Ludlow J., *Appleton vs. Ruth*, 15 W. N. C., 127 (C. P. 3, June 14, 1884). The plaintiff in that case being a clergyman who resided in New Jersey but who was according to ecclesiastical law a member of the diocese of Pennsylvania. Security for costs was required, Judge Ludlow saying "security for costs should be entered where a man is substantially a non-resident although he may technically be within the jurisdiction." A non-resident libellant whose next friend was also a non-resident was required to give security under this rule. *McElhenney vs. McElhenney*, 13 W. N. C. 194 (C. P. 2, April 28, 1883). A rule for security for costs on a non-resident complainant in a bill in equity was made absolute in *Smoot vs. Harrah*, 5 W. N. C. 147 (C. P. 3, Yerkes, J., Feb. 16, 1878). Where the equitable plaintiff is a non-resident and the legal plaintiff a resident however, the court will not require the use plaintiff to give security if the legal plaintiff files of record an averment that he consented to the bringing of the suit. *Black vs. Molty*, 26 W. N. C. 97 (C. P. 2, April 26, 1890).

The plaintiff can be required to give security before he has filed his narr. *Ellison vs. Penn. Electric Light Co.*, 19 W. N. C. 131 (C. P. 4, Jan. 29, 1887).

The application for security should be made at the earliest possible moment; in the older cases it was held, that it was never too late to grant the rule when it did not delay the trial. *Shaw vs. Wallace*, 2 Dall, 179 (1792). *Shaw vs. Walters*, 1 Yeates 176 (1792).

But these older cases have been departed from and it is now held too late to ask for security after the case has been on the trial list. *Mason vs. Frick* 12 W. N. C., 570 (C. P. 1, Feb. 3, 1883), even though the plaintiff files an amended statement. *Smart vs. Chamberlin*, 26 W. N. C., 272 (C. P. 4, May 24, 1890). In *Hickok vs. Park Assn.* 14 W. N. C., 12 (C. P. 1, Nov. 3, 1883), however, an application for security for costs was allowed after the cause was at issue; so also, *Kirk vs. Kirk*, W. N. C., 281 (C. P. 2, June 4, 1883).

After judgment it is too late even though the judgment has been opened and the defendant let in to a defence. *Applegate vs. R. R. Co.*, 12 W. N. C., 406 (C. P. 1, Dec. 9, 1882).

31. The rule applies also where the plaintiff has removed from the State *pendente lite*. *McGarry vs. Crispin*, 3 Clark, 25 (King, P. J. C. P., May 24, 1885); contra *Searle vs. Mann*, 1 Miles, 321.

or office bonds, or where the plaintiff after suit. brought has taken the benefit of the insolvent laws, the defendant, on motion and affidavit of a just defense³² against the whole demand, may have a rule for security for costs; and in default of security being entered at the time named by the court, judgment of non-suit may be entered, on motion.³³

§ 44½ Bills of costs for attendance of witnesses at terms when a cause is continued or tried, must be filed, and a copy thereof served on the other party within four days after the continuance or trial, and the other party may, within four days after the service of the bill, require the party who files it to tax the same before the prothonotary on forty-eight hours notice. No bill of costs shall be allowed unless it has been filed and a copy thereof served within the time fixed by this rule; nor shall any objection to any bill of costs be heard, unless the party who filed it shall have been required to tax it under this rule.

Bills of costs shall contain the names of the witnesses, the dates of their attendance, and the places from which mileage is claimed. They shall be verified by the affidavit of the party filing them, that the witnesses were actually present in court on the days stated, and that, in his opinion, they were material witnesses.³⁴

32. The affidavit need not set out particulars of the defense. *Shendan vs. Cassidy*, 1 W. N. C., 134 (D. C., Dec. 26, 1874).

33. See *Fouse vs. Carrick*, 5 W. N. C., 168 (C. P. 1, May 9, 1878).

34. This rule is new, having been adopted by the courts in 1889. It was under discussion by the supreme court in *Flisher vs. Allen*, 141 Pa. St., 525 (April 13, 1891), where, in a per curiam opinion, it said "it is a rule of practice merely, and was evidently intended to prescribe the mode of ascertaining the amount of the cost due the successful party. * * *

The rule in question refers only to the fees of witnesses, and provides that when the cause is continued on trial the bill of costs for attendance of witnesses must be filed and served upon the opposite party within four days, etc. The obvious purpose of this is to prevent imposition upon the losing party by the filing of large bills of costs for witnesses who may have left the jurisdiction or be difficult to find."

§ 45. All bills³⁵ of costs shall be taxed in the first instance by the prothonotary (if taxation be required), subject to an appeal to the court: *Provided*, That the party appealing shall, within three days after appeal entered, file a specification of the items to which he objects, and the ground of his objections, otherwise the appeal shall be dismissed, and the costs paid over according to the taxation of the prothonotary.

§ 46. Whenever, after an appeal by the defendant, the amount recovered by the plaintiff below is reduced, either by arbitration or trial by jury, no writ of execution shall issue (unless by agreement of parties) until the costs are taxed by the prothonotary, who shall tax the same on the application of either party after reasonable notice to other side; subject to an appeal to the court, as provided in the preceding section.

§ 47. When bills of costs are paid to, and stopped in the hands of the prothonotary for taxation, either party may have the same taxed, on twenty-four hours notice to the opposite party or his attorney.

§ 48. Any party intending to tax costs before the prothonotary, shall give him and the opposite party twenty-four hours notice of such intention; the time to be fixed for such taxation shall be from two to three o'clock P. M.

RULE XVII.

*Depositions.*³⁶

§ 49. Depositions taken under a rule of court may be

35. A party will be allowed the cost of the jurat required to be annexed to the bill of costs. *DeHaven vs. Merath*, 7 C. C. Rep., 388 (Thayer, P. J., C. P. 4, December 7, 1889).

36. Depositions not taken according to the rules established by the

read in evidence at the trial of the cause,³⁷ in case of the death, absence out of the State, or other legal inability of the witness to attend. But if the witness has a residence within this state, and within forty miles of the place of trial,³⁸ the deposition shall not be read in evidence, unless the party offering it shall satisfy the court that the witness is out of the State, or that a subpoena has been actually taken out,³⁹ and that the witness has been duly subpoenaed or could not be found, after reasonable pains taken for that purpose.

§ 50. A rule to take the depositions of aged, infirm and going witnesses, to be read in evidence on the usual terms, is of course, and may be entered by either party,

court are not evidence. *Russell vs. Gray*, 7 S. & R., 90 (Duncan, J., June 12, 1824).

The production of papers cannot be had by rule at the taking of deposition of aged witness. *Penna. Co. for Ins., etc., vs. Phila., Germ. & Norristown R. R. Co.*, 9 C. C. Rep., 517 (C. P. 4, Arnold, J., April 4, 1891).

Upon a rule to take depositions outside the county by a defendant on a rule to open a judgment, he must tender the plaintiff a reasonable sum for counsel fees. *Strauch vs. Royal Land Co.*, 5 W. N. C., 473 (C. P. 1, Biddle, J., May 4, 1878).

37. A deposition taken in a former suit between the same parties may be given in evidence where the witness is living and out of the State. *Magill vs. Kauffman*, 4 S. & R., 317 (Tilghman, C. J., June, 1818). *Carpenter vs. Groff*, 5 S. & R., 162 (Tilghman, C. J., May, 1819). But in order that depositions taken in another cause may be admitted, "identity of subject matter, in whole or in part, and identity of the parties in interest must unite." A deposition therefore, taken in a suit by a wife for injuries received by her husband is not admissible in an action by the administrator of the husband against the same defendant and for the same cause of action. *Fearn vs. West Jersey Ferry Company*, 48. L. I., 466 (McCollum, J., Oct. 5, 1891).

38. A defendant cannot offer in evidence a deposition taken by the plaintiff and not used by him, if the witness live within the limit and there be no proof of his sickness or inability to attend. *Gordon vs. Little*, 8 S. & R., 533 (Tilghman, C. J., Sept. 1822).

39. If the witness be a paralytic, a subpoena need not be taken out. *Covanhovan vs. Hart*, 21 Pa. St., 495 (Black, C. J., Sept. 8, 1853).

stipulating forty-eight hours notice⁴⁰ to the adversary.⁴¹ But the court may order a shorter notice in any case when the exigency thereof may require it.

§ 51. A rule for a commission to any of the United States, or to foreign parts, is also, of course, but the interrogatories must be filed in the prothonotary's office at the time, and written notice of the rule, and of the names of the commissioners,⁴² must be served on the adverse party, at least fifteen days before the commission issues, in order that he may file cross-interrogatories⁴³ or nominate commissioners on his part.

40. A deposition taken without notice cannot be admitted. A notice must be served upon a party to the proceedings. Notice to special bail is not sufficient. *Vincient vs. Huff*, 4 S. & R., 298 (Gibson, J., June, 1818).

41. This section requires notice to the "adversary" and sections 51 and 52 require notice to the "adverse party." It might, therefore, be questioned whether a notice served upon the attorney of the adversary or of the adverse party, would be sufficient. In *Ives vs. Miles*, 5 Watts, 323 (Kennedy, J., June, 1836), the rule was silent as to the person upon whom the notice should be served, and notice served on the attorney was held sufficient. The service is good unless he objects at the time of service. *Newlin vs. Newlin*, 8 S. & R., 41 (Gibson, J., March, 1822). If the rule directs service on the "party" notice to the attorney is not sufficient. *Nash, et al. vs. Gilkenson, et. al.*, 5 S. & R., 352 (Gibson, J., December, 1819); *Newlin vs. Newlin*, (supra); *Cunningham vs. Jordan*, 1 Pa. St., 442 (Rogers, J., 1845); even though the attorney on receiving the notice make no objection. *Gracy vs. Bailee*, 16 S. & R., 126 (Huston, J., May, 1827).

The notice to take depositions is irregular if not signed, and the deposition will not be admitted. *McDonald vs. Adams*, 7 W. & S., 371 (Sergeant, J., July 1, 1844).

42. In divorce the interrogatories are to be framed by the party asking for the commission and the court will pass upon them on exception. *Gilbert vs. Gilbert*, 8 W. N. C., 535 (C. P. 4, Arnold, J., November 6, 1886). In *Snowden vs. Snowden*, 18 W. N. C., 347 (C. P. 3, October 2, 1886) the court ordered the master to frame the interrogatories after notice of the names of the witnesses and the offers of testimony as to each witness, with leave to the parties to file supplemental and cross-interrogatories.

43. Cross-interrogatories filed before the issuing of the commission are in time. *Case vs. Cushman*, 1 Pa. St., 241 (Kennedy, J., 1845).

§ 52. A rule may in like manner be entered by either party to take the depositions of witnesses, without regard to the circumstance of their being aged, infirm, or going witnesses, stipulating however, eight days notice to the adverse party ;⁴⁴ subject, nevertheless, in all other respects, to the existing rules and regulations. But no party shall be entitled to compel the deposition of the adverse party, in advance of the trial, except upon an order of the court upon notice and cause shown.⁴⁵

§ 53. All depositions of witnesses, under a rule of court, to be used in evidence on the trial, shall be taken

44. Under this section the deposition of a person in prison may be taken. *Hopper vs. Williams*, 2 Clark, 447 (*Per curiam*, June, 1843, D. C. of Philadelphia Co.).

45. This portion was adopted January 26, 1878, after C. P. 3 and 1 had decided in *Yerkes vs. Whitaker*, 4 W. N. C., 429, (October 22, 1877,) and *Wise vs. Philadelphia Dispensary*, 4 W. N. C., 570, (December 8, 1877,) that under the then rule the deposition of the adverse party could be taken and on his refusal to testify an attachment would issue. Court No. 2 in the case of *Asch vs. West Philadelphia Passenger Railway*, 4 W. N. C., 571 (December 7, 1877), was of opinion that "If there were sufficient grounds to require a party to testify at the call of his opponent, in advance of the trial, they must be presented by affidavit in support of a rule to take his deposition." And in *Yerkes vs. Whitaker*, 4 W. N. C., 571 (December 22, 1877), on rule to show cause why the attachment issued in *Yerkes vs. Whitaker* 4 W. N. C. 429, (*supra*), should not be rescinded, the court remarked in making the rule absolute, "That they would in such cases, require an affidavit setting forth the reasons of the application and the proposed line of examination."

Two cases bearing on this rule since the adoption of the amendment are reported. In the first *Slockam, et al. vs. Vansant, et al.*, 17 W. N. C., 158 (C. P. 2, December 7, 1885), a rule to take deposition of defendant as under cross-examination was made absolute on an affidavit that the defendant had sold the lumber to recover the price of which suit had been brought, in car load as received and that the persons to whom the same was sold were unknown to plaintiff. In the other, *Hebling vs. Leavitt*, 3 C. C. Rep., 145 (C. P. 3, February 14, 1887), the court discharged the rule, though the affidavit of plaintiff alleged that the defendant was in ill health and in event of his death the plaintiff could not testify, the evidence to make out plaintiff's case being principally in the breast of the defendant.

before a judge, magistrate, notary public, or a commissioner⁴⁶ appointed by the court, upon due notice to the opposite party or his attorney.

§ 54. On all motions or rules to show cause, on the hearing of which facts are to be investigated, the testimony of witnesses shall be taken by depositions in writing, before a judge, magistrate, notary public, or a commissioner appointed by the court, upon forty-eight hours notice in writing to the opposite party or his attorney; and no witnesses shall be examined at the bar but by a special and previous order of the court.

§ 55. On the return and opening of any commission, or filing⁴⁷ of any deposition, either party may give notice thereof to the opposite party, who shall within ten days after service of such notice⁴⁸, file with the prothonotary a specification of his exceptions, if he have any, to the form or execution of the commission or taking of the deposition,

46. A rule to take depositions on three consecutive days, held good in *Phillipi vs. Bowen*, 2 Pa. St. 20 (Gibson, C. J., 1845). Upon notice of rule to take depositions before B, etc., or some other person competent to administer oaths, depositions taken before C, a magistrate, in the office of B, were admissible. *Alexander vs. Alexander*, 5, Pa. St., 277 (Burnside, J., Aug. 27, 1847).

A rule to take depositions implies, without being so expressed in it, that they are to be taken before some judge or justice having authority to administer an oath. *Keller et al. vs. Metz, et al.* 5 S & R., 246 (Duncan J., June 1819).

47. Our rules do not require the filing of depositions, but it is within the discretion of the court whether they should be filed. *Johnston, et al. vs. Penn. R. R. Co.*, 5 W. N. C., 360 (C. P. 1, Biddle J., May 4, 1878). Depositions will not be suppressed because not filed in time when the failure was owing to a mistake on the part of the commissioner. *Smith vs. Cokefair*, 8 C. C. Rep., 45, (Schuyler, P. J., North. Co., Jan. 27, 1890).

48. The failure to give notice of the filing of depositions is immaterial, if the exceptions afterwards filed would not have been available if filed in time. *Hagey vs. Detweiler*, 35 Pa. St., 409 (Woodward, J., 1860).

Exceptions not filed within the time required will not be considered. *Marsh vs. Nordyke & Marmon & Co.*, 2 Monaghan, 494, (*Per curiam*. Oct. 29, 1889).

or to the mode of swearing the witnesses, or to any of the acts or omissions of the commissioners, examiners or officers, or of any other person or persons, in or about the same. No exception to the admissibility of the evidence so returned or filed, not included in such specification, shall be taken on the trial of the cause, unless it be an exception that might be taken to the evidence, if the witness were offered for examination orally in court: *Provided*, That nothing herein be construed to permit or sanction the reading on trial in any case of the answers or deposition of a witness residing within the state, and within forty miles of the city of Philadelphia. In all cases of exceptions filed as above by either party, the other party may, before the trial of the cause, on motion, obtain a decision of the court upon the sufficiency or insufficiency of the exceptions; and such decision shall not be reconsidered upon the trial, but a bill of exceptions thereto shall be signed, if required at the trial, in the same manner as if the decision had taken place during the trial: *Provided*, That the motion for such a decision be made within ten days after the exceptions are filed; and that if the same be not made within that time, the decision thereon can only be had upon the trial.

RULE XVIII.

Divorce.

I.—THE LIBEL.

§ 56. Libels shall be framed in general analogy to bills in equity by setting out the matters relied on distinctly, in separate paragraphs, consecutively numbered, and containing as follows:⁴⁹

49. The libel must contain all averments required by rule of court as well as by act of assembly. If it does not, the libel will not be quashed, but leave will be given to amend. *Shellenberger vs. Shellenberger*, 6 C. C. Rep., 287, (Thayer, P. J., C. P. 4, Dec. 29, 1888); *Bainbridge vs. Bainbridge*, 15 W. N. C., 529 (Mitchell, J., C. P. 2, March 2, 1885.)

Paragraph 1.

- a. The names of the parties, and time and place of marriage ;
- b. The citizenship and domicile of the parties respectively at the time of marriage, and since, including a positive averment that the libellant has been a citizen and resident of the state for one whole year previous to the filing of the libel.
- c. Their present place of actual residence, with details of street, number, etc.

In case the present residence of the respondent be unknown to the libellant, then an explicit averment of that fact shall be made, together with a statement of the respondent's last known residence, and the time at which he or she was last known to be there.

If the marriage shall not have been contracted and the present actual residence of both parties shall not also be within the county of Philadelphia, then a full statement shall be made of the time, place and circumstances under which the parties, or either of them, became domiciled within the jurisdiction of the court.

Subsequent paragraphs shall contain a succinct statement of the time, place⁵⁰ and circumstances of the alleged cause of divorce. Where more than one cause of divorce is alleged, each shall be set out in a separate paragraph.

The final paragraph shall contain a prayer for divorce, *a vinculo matrimonii* or *a mensa et thoro*, as the case may be.

II.—THE AFFIDAVIT.

§ 57. The affidavit to the libel shall be in the form now used, as required by the act of assembly, and shall be taken before a magistrate of this county.

50. As to particularity of "time, place and circumstances" see *Spengler vs. Spengler*, 15 W. N. C., 437 (1884) ; *Gillardon vs. Gillardon*, id., 428 (1885) ; *Bainbridge vs. Bainbridge*, id., 429 (1885).

As to general allegation of adultery, with bill of particulars; see *Shisler vs. Shisler*, 19 W. N. C., 130 (1886).

III.—RULE TO ANSWER.

§ 58. A rule on the respondent to appear and answer within thirty days after the return day of the subpoena, shall be entered of course by the prothonotary, at the time of filing the libel.

IV.—COPY OF LIBEL AND NOTICE TO RESPONDENT.

§ 59. A copy of the libel shall be served upon the respondent with the subpoena. The said copy shall have endorsed upon it a notice to the respondent in the following form:

To A. B.

the within named respondent.

You are hereby notified and required, within thirty days from Monday, the day of next, to cause an appearance to be entered for you in the court of common pleas, No. of the county of Philadelphia, and an answer to be filed to the libel for divorce, of which the within is a copy.

NOTE.—You are hereby warned that if you fail to enter an appearance, and file an answer as above notified and required, the cause will proceed without you, and you will be liable to have a decree of divorce entered against you in your absence.

C. D.

Attorney for Libellant.

V.—SERVICE.

§ 60. The subpoena, copy of libel and notice to appear and answer, shall be served by the sheriff, upon respondents who are within the county at the time of the service.

§ 61. Where the respondent is not within the county but is within the state, the sheriff shall deputize the sheriff of the county where the respondent may be found,

service.

ing the fact.

VI.—PUBLICATION.

in the following form .

Philadelphia, Pennsylvania.

playing a divorce against you, now you are hereby notified

and required to appear in said court on or before Monday, day of next, to answer the complaint of the said C. B., and in default of such appearance you will be liable to have a divorce granted in your absence.

D. E.,
Sheriff of Philadelphia.

And the sheriff shall make due return of his action therein.

VII.—APPEARANCE.

§ 64. The counsel for the respondent shall enter his appearance by filing a written order thereof, accompanied by a letter of attorney from the respondent, which shall be duly acknowledged before the prothonotary or judge, justice of the peace, or magistrate of the county, district, or state in which the respondent may reside, or if the respondent be without the United States then before an officer authorized by the laws of this state to take acknowledgments of deeds, etc., in a foreign country. The said letter shall be attached by the master to his report.

VIII.—PROCEEDING EX-PARTE.

§ 65. Where service has been duly made, either personally or by publication, and the respondent does not appear, or having appeared does not answer, within thirty days after the return day, the libellant may proceed *ex parte*.

IX.—ANSWER AND SUBSEQUENT PLEADINGS.

§ 66. The respondent may, at any time within thirty days after the return day, or afterwards with leave of the court, upon cause shown for the delay, demur or answer to the libel, or may demur to part and answer to the rest.

§ 67. The answer shall be responsive to the libel, and shall be arranged in paragraphs corresponding as to subject matters, as nearly as may be with the paragraph of

the libel ; but other new matters relied upon by the respondent, may be set forth in subsequent paragraphs.

§ 68. Where the answer shall not be confined to mere denial of the facts averred in the libel, but shall contain new matters, the libellant may file a replication to such new matters only. No further pleadings shall be made by either party without special leave of the court.

§ 69. The respondent may enter a rule for a bill of particulars under the act of 25th May, 1878, of course, at any time before filing his or her answer, but after answer filed no such rule shall be entered unless specially allowed by the court.

§ 70. Should the pleadings raise any issue of fact relevant and material to the relief sought, which either party may desire to have tried by a jury, an issue shall be framed by the party desiring such trial, and presented to the court for approval. The issue shall not be a feigned issue, but an issue directly framed on the facts alleged and denied in the pleadings. Such issue and trial shall be of right at any time before the taking of testimony upon the merits of the case shall have actually commenced ; but thereafter such trial by jury shall be allowed only in the discretion of the court upon motion and case shown.⁵¹

§ 71. Amendments of the pleadings may be allowed in the discretion of the court;⁵² but no amendment of the libel alleging a cause of divorce of a different nature shall be allowed.

51. An application for issue by libellant refused while testimony was being taken for respondent. *Gillardon vs. Gillardon*, 16 W. N. C., 457 (C. P. 2, Oct. 3, 1885). In *Stuard vs. Stuard*, 1 C. C. Rep., 504 (C. P. 3, Finletter, J., April 24, 1886), an issue was allowed after seven meetings had been held by the master.

52. Under this rule the libel may be amended by the addition of other facts tending to support the cause contained in the libel. *Perkins vs. Perkins*, 16 W. N. C., 48 (C. P. 2, Mitchell, J., March 28, 1885).

As to how far amendments in divorce cases should be allowed, see *Clayburgh vs. Clayburgh*, 15 W. N. C., 365.

X.—APPOINTMENT OF A MASTER.

§ 72. When a case is ready to be proceeded with, either upon answer not demanding a trial by jury, or *ex parte*, a master shall be appointed by the court, upon motion of either party, which motion shall be made in writing and placed upon the regular current motion list of the court.

§ 73. No suggestion or agreement from parties or counsel as to the person to be appointed master, will be received under any circumstance.

XI.—PROCEEDINGS BEFORE THE MASTER.

§ 74. The master shall give ten days written notice to the counsel of both parties, of the time and place of taking testimony. If there shall be no appearance for the respondent, the notice shall be given to him or her personally if possible, or if not, then by leaving it at his or her place of residence, or by registered letter to the address where the master shall have reason to believe it will be most likely to reach him or her.

§ 75. In all cases where there is no return of personal service, and no appearance is entered for the respondent, it shall be the duty of the master, before proceeding to take the testimony upon the merits of the case, (to inform himself by examination of the libellant, and by such other means as he shall deem conducive to the purpose, of the residence and address of the respondent; and thereupon, the master shall use every exertion by personal inquiry within the county, or by registered letters outside of the county, and in case of failure by this means, then by advertisement in such newspaper or newspapers as, in the opinion of the master, will be most likely to reach the respondent, once a week for four full weeks, and by any other means attainable, to give actual notice to the respondent, of the application for a

divorce, the grounds thereof, the name and address of the master, and the time and place of taking testimony in the cause ; *Provided*, that in cases in which the respondent was last known to reside and last heard of in the county of Philadelphia, it shall not be necessary to advertise such notice. Thereafter the master may proceed to take testimony upon the merits of the cause, but he shall not file his report, until he is satisfied that all means attainable have been used to give actual notice to the respondent ; and the efforts to that end shall be set forth in his report.

§ 76. The master shall make inquiry of the witnesses and report to the court, the ages of the libellant and respondent, and the number, names, ages and residence of their children, if they have any ; and in cases where the subpoena has not been personally served, or, after publication, no appearance has been entered for the respondent, and the other means of giving actual notice to the respondent shall have failed, the master shall, if possible, give written notice of the proceedings to such children of the respondent, as have attained their majority, or if there are none, then to the parents, brothers and sisters or other near relatives of the respondent, requesting them to assist him in giving actual notice to the respondent, and report to the court what efforts he has made to effect such notice, and the result thereof.

§ 77. Where the residence of either or both parties is given as within this county, the master shall, by personal inquiry, satisfy himself and report to the court, whether the stated residence is correct and *bona fide*, and the length of time the libellant has resided in this State, and also whether the respondent has ever resided in this State, and if so, when and where. In case the residence of either party is given as in another county of this State, the master shall make such inquiries by letter to the sheriff of such other county.

§ 78. When a case is ready to proceed to the testimony upon the merits, the master shall examine each witness specially⁵³ and in detail upon all the matters set forth in the libel and the answer, and upon such other matters as may appear to be relevant and material. And it shall be his duty, whether requested by either of the parties or not, to summon and examine such witnesses as he may have reason to believe have knowledge of any matters relevant and material to the just and proper determination of the cause.

§ 79. Neither party shall be allowed to examine any witness called on his or her behalf until after the master shall have finished his examination of such witness, but after the master's examination of such witness, the party calling him may supplement his examination in chief and upon the conclusion of such supplementary examination the opposite party may cross-examine.⁵⁴

§ 80. The master shall have the usual powers of a master in equity, in regard to the detention of witnesses for examination, and the general course of the proceedings before him, subject to the directions of the court from time to time upon motion of either party. When objection is made to the competency or relevancy of testimony, the master shall note the objection, and thereupon proceed to take the testimony subject to the objection.

§ 81. The master's fee shall be \$25, and \$10 additional for each meeting after the first, held in the discharge of

53. This does not mean that the master shall specially examine witnesses, whose testimony is intended to be obtained by commission. *Gilbert vs. Gilbert*, 18 W. N. C., 535 (C. P., 4, Arnold, J., November 6, 1886).

54. Commissions to take testimony may issue in divorce proceedings. *Snowden vs. Snowden*, 18 W. N. C., 347, (C. P., 3, October 2, 1886). The counsel may frame the interrogatories, *Gilbert vs. Gilbert*, (supra) or the court may direct the master to frame them. *Snowden vs. Snowden*, (supra.)

his duty ; and whenever it shall be necessary for him to incur any expense under these rules he may demand from the libellant the sum required for such expenses before they are actually incurred ; and thereupon the proceedings shall stay until the said sum be paid.

§ 82. The master shall keep minutes of his meetings, noting the attendance and adjournments, and at whose instance the adjournments are had, and annex the same to his report. If either party shall be of opinion that the other party, or the master, is unnecessarily or unjustly delaying the proceedings or increasing the expense thereof, he may notify the master of his exceptions in that regard, and the master shall note the same in his report for such action of the court as may be adjudged just and proper.

§ 83. The master may at any time with leave of the court require security for the payment of his and the prothonotary's costs, and may decline to proceed further until such security shall be entered.⁵⁵ No rule for divorce shall be made absolute until all the costs are paid.

§ 84. The master shall report his proceedings and the testimony, together with his opinion of the case, and shall append thereto the libel and all subsequent papers filed in the case, with a copy of the docket entries and shall file the same in the office of the prothonotary.

XII.—FINAL DECREE.

§ 85. When the master's report has been approved by the court, a rule may be entered of course, to show cause

55. A wife being libellant is responsible for the master's costs (including his fee) incurred to the end of taking testimony in her behalf, though she may recover them in the final decree, and proceedings may be stayed until she pays or gives security. *Calhoun vs. Calhoun*, 1 C. C. Rep., 392 (C. P., 3, Finletter, P. J., February 13, 1886).

why a decree of divorce should not be granted. All such final rules for divorce shall be returnable to the first Saturday of each month and the third Monday of September, and shall be then heard upon a divorce list. Notices of such rules shall be served on the respondent personally if possible, but if the notice cannot be served on the respondent personally, then it shall be served on his or her counsel of record, if there be one, ten days before the time fixed for hearing the rule. If the notice cannot be personally served on the respondent, and there is no counsel of record, the counsel for libellant, shall publish once a week for four full weeks in the *Legal Intelligencer*, and one daily newspaper in the city of Philadelphia,⁵⁶ and give such other notice by advertisement or otherwise as the court may direct in the particular case, in the following form:

To A. B. late of No. _____ Street, Philadelphia, Pennsylvania.

You are hereby notified that a final rule for divorce has been granted against you at the suit of C. B., your _____ which will be heard in the court of common pleas, No. _____ of Philadelphia, of _____ term, 18 _____ No. _____ on Saturday, the _____ day of _____ on which day you may appear and show cause, if any you have, why such divorce should not be granted against you.

C. D.
Attorney for Libellant.

§ 86. In all cases an affidavit of the time, place and manner of service shall be filed, and in case of service on the counsel of respondent, or by publication, the efforts which

56. Where the last known residence of respondent is in Philadelphia, advertisement in one daily newspaper only is required. *In re* rules of court, 15 W. N. C. 174 (C. P., 2, September 20, 1884).

have been made to serve the respondent personally shall be stated in the affidavit.⁵⁷

§ 87. Services of notices or rules upon the respondent shall not be made by the libellant, or the next friend, or the counsel of record.

RULE XIX.

Execution. See Publication of Writs, Security.

§ 88. In all cases in which after process issued from any of these courts, the defendant shall be entitled to the benefit of the \$300 exemption law, and shall claim the same, it shall be the duty of the sheriff, at least forty-eight hours before causing the appraisement to be made, to notify the plaintiff's counsel by writing of the time and place of such intended appraisement, at which time and place the plaintiff and his counsel or some person deputed by them, shall have the right to be present.

RULE XX.

Feigned Issues.

§ 89. Whenever a rule taken by the sheriff under the ninth section of the act of Assembly of the 10th of April, 1848, entitled "An Act extending the chancery powers of, and to the jurisdiction and proceedings in certain courts," shall be made absolute by the court, a feigned issue shall be formed in such case, upon a wager in the usual form, to determine whether the right of property in the goods levied on and claimed, or any part thereof, is in the defendant or in the claimant, in which issue the

57. Where the respondent is out of the jurisdiction, and in reply to a letter from the master refuses to attend a hearing, it is unnecessary to state in the affidavit of publication of notice of final rule for divorce, that any effort has been made to serve respondent personally. *Baldwin vs. Baldwin*, 17 W. N. C., 222 (C. P. 1, Jan. 2, 1886).

claimant shall be the plaintiff, and the plaintiff in the execution the defendant. The declaration in such issue shall be filed by the claimant within fourteen days from the time such rule is made absolute; and within the said time the claimant shall give bond to the plaintiff in such penal sum and with such security, as shall be approved by one of the judges of this court, conditioned that the goods levied on and claimed shall be forthcoming upon the determination of the said issue, to answer the execution of the plaintiff, if said issue shall be determined in favor of the said plaintiff in the execution, or so many of them as shall be determined to belong to the defendant, and to be subject to the execution of said plaintiff. When said declaration is filed and bond given, the sheriff shall withdraw from the possession of such of the goods and chattels seized by him under the execution as are claimed by the claimant;⁵⁸ no action shall be brought against the said sheriff in respect of the said goods and chattels; and the question of costs and all further questions be reserved until after the trial of the said issues.

RULE XXI.

Foreign Attachment.

§ 90. No order shall be made for the sale of property seized on a foreign attachment, unless the plaintiff, or some other person acquainted with the demand of the plaintiff, shall make affidavit that the debt or demand of the plaintiff is just.

§ 91. In case of foreign attachment, no bail shall be taken in order to dissolve the attachment without first giving notice to the plaintiff, or his attorney, of the time and

⁵⁸ Where the claimant neglects to give the bond, the court, on motion, will order the sheriff to sell, and pay the proceeds into court, to abide the determination of the issue. *Dillon vs. Conover*, 10 Phila., 450 (Thayer, P. J., C. P. 4, Nov. 20, 1873).

place of taking such bail, that he may have an opportunity of excepting to the sufficiency thereof.

§ 92 In cases of foreign attachment,⁵⁹ where the plaintiff desires to take the answers of the garnishee on interrogatories, he may, after the return of the *scire facias*, file his interrogatories in the prothonotary's office, and enter a rule⁶⁰ upon the garnishee to answer interrogatories on or before a day to be fixed, not less than twenty days from the time of serving a copy of the rule and interrogatories upon the garnishee or his attorney.

§ 93. If the plaintiff in a foreign attachment do not, within three months after judgment, issue a writ of *scire facias* against the garnishee or garnishees, the court, upon motion of the garnishee and no sufficient cause shown for the delay, may order the attachment to be dissolved.

RULE XXII.

Insolvents.

§ 94. The publication of notice to the creditors of insolvent debtors shall be made three times a week for two weeks, in two daily newspapers published in the city of Philadelphia, and twice successively in the *Legal Intelligencer*, the first publication to be made at least fifteen days previous to the day of the hearing.

§ 95. It shall be optional with the petitioner for the benefit of the insolvent law, to give either public or personal notice to his creditors. If personal notice be given, the proof of service of the same shall be filed at least three days before the day of hearing.

59. Under this section it was held that a rule might be entered on a garnishee to answer in attachment execution. *Wiener vs. Davis, et al.*, 4, Clark 91.

60. The rule may be entered any time after the return of the writ. *Wiener vs. Davis* (supra).

RULE XXIII.

Judgments.

§ 95½. Judgment by default of any kind may be moved before and entered by the prothonotary who shall assess the damages in all cases in which the amount thereof is set forth with certainty in the statement of claim filed.⁶¹

§ 96. Judgment shall not be entered on any verdict, without the special order of the court, until the sum of four dollars, required by the act of Assembly of the 29th of March, 1805, shall be paid to the sheriff by the party for whom the verdict shall be given, and the judgment shall be dated on the day it shall be entered.

§ 97. No judgment by confession shall be entered in any *amicable suit* unless there be filed, at the time of filing the agreement, a specific statement of the cause of action signed by the parties or their attorneys, and where said statement is signed by the attorney of the defendant, there shall also be filed with the same, his warrant of attorney⁶² but this rule shall not apply to judgments on warrants of attorney, or to revivals of judgments by agreement.⁶³

61. See act of 22d April, 1889 (P. L., 41).

62. See *Flanigan vs. Phila.*, 51 Pa. St., 491 (Agnew, J., March 5, 1866).

63. "This is a very old rule adopted originally by the district court and afterwards made one of the standing rules of the court of common pleas, upon the reorganization of the courts under the new Constitution of 1874. Its object is, to promote certainty in judicial proceedings, to protect defendants against double claims for the same cause of action, and to prevent fraudulent judgments. It is a rule which may be invoked not only in favor of defendants but in favor of any party interested in the judgment. *Baeder vs. Murray*, 1 Phila., 273, 1 T. H. Prac., cap. 15, p 342.

"'The rule is an explicit direction to the prothonotary to enter no such judgment' that is, to enter no judgment by confession in pursuance of an agreement for an amicable action and judgment, without it is ac-

§ 98. Where the warrant of attorney constitutes an integral part of a lease, or other original contract, from which it cannot be separated without injury, it shall be sufficient to file a copy of the lease or contract.

§ 99. If a warrant of attorney to enter judgment be more than ten years old, and less than twenty, a motion must be made to the court or a judge thereof, for leave to enter judgment,⁶⁴ which motion must be founded upon an affidavit alleging the due execution of the warrant, and that the money is unpaid and the debtor living, but if the warrant be more than twenty years' old, there must be a rule to show cause, which must be served on the debtor, if he is to be found within the State.

RULE XXIV.

Jury.

§ 100. The prothonotary shall cause a list of jurors in each cause set down for trial by jury to be printed, and when requested he shall deliver a copy to the attorney on each.

Section 101 was stricken out by rule of 1885, 42 L. I., 414.

§ 102. Every challenge to the array of jurors returned for the trial of any issue in fact, shall be made on the first day of the period at which the said issue shall be set down for trial.

§ 103. The prothonotary shall endorse upon every writ of *venire facias* which shall be specially awarded in any cause, the day assigned in the trial list for the trial of the said cause.

accompanied by a specific statement of the cause of action signed by the parties, as required by the rule of court.

"The only confessions of judgment excepted from the operation of the rule are those which are entered upon warrants of attorney or in pursuance of agreements for the revival of judgments." Thayer P. J., C. P. 4. *Carter vs. Shoener, et al.* 5 C. C. Rep., 186, (March 17, 1888).

64. The court has power to make this rule. *Herman vs. Rinker*, 106 Pa. St., 121 (Paxson, J., April 14, 1884).

§ 104. The sheriff or other officer to whom any writ of *venire facias* specially awarded in any cause shall be directed, shall summon the jury to appear in court at ten o'clock in the forenoon of the day so endorsed on the said writ.

RULE XXV.

Letters Rogatory.

§ 105. Letters rogatory may issue on application of either party to take depositions, which letters rogatory shall be in the form following, viz. :

“The Court of Common Pleas No. , for the County of Philadelphia, Pennsylvania.

“To any judge or tribunal having jurisdiction of civil causes at——

Whereas a certain suit is pending before us, in which A. B. is plaintiff and C. D. is defendant, and it has been suggested to us that there are witnesses residing within your jurisdiction, without whose testimony justice cannot completely be done between the said parties ; we therefore request you that, in furtherance of justice, you will, by the proper and usual process of your court, cause such witness or witnesses as shall be named or pointed out to you by the said parties, or either of them, to appear before you or some competent person by you for that purpose, to be appointed and authorized, at a precise time and place by you to be fixed, and there to answer on their oaths and affirmations, to the several interrogatories hereunto annexed ; and that you will cause their depositions to be committed to writing, and returned to us under cover duly closed and sealed up, together with these presents, and we shall be ready and willing to do the same for you in a similar case when required. Witness, etc.”

RULE XXVI.

Money Paid into Court.

§ 106. Until otherwise ordered, the Fidelity Insurance, Trust and Safe Deposit Company, of the city of Philadelphia, shall be the bankers of court No. 1. The Pennsylvania Company for Insurances on Lives and Granting Annuities shall be the bankers of courts Nos. 2 and 4, and the Girard Life Insurance, Annuity and Trust Company shall be the bankers of court No. 3.

All moneys paid into court by the sheriff shall be paid by him direct to the banker, to the credit of the court in the particular case or matter ; and the said banker shall keep a separate account of each of said payments, designating the case with the term and number thereof. The sheriff shall keep a separate bank book with said banker for each court, in which said banker shall enter the money paid by him into this court, and the name of the case in which it is paid, with the term and number thereof. And the entries made accordingly in said book shall be evidence that the money is so deposited with the said banker to the credit of the said court in the particular case or matter. A duplicate of said bank book shall also be kept by the prothonotary of this court, in which the same entries shall be made by the banker. When the sheriff is about to pay money into court in any case or matter, he shall receive the said duplicate bank book from the prothonotary, and as soon as the deposits shall have been made, and the entry by the said banker shall have been made accordingly in each of the said bank books, the said duplicate bank book shall be returned by the sheriff to the prothonotary. No money shall be paid out of court by the said bankers, except on the checks of the prothonotary, accompanied by a certificate endorsed on each check, under the hand of the prothonotary and the seal of the court, that the said money was ordered to be so paid by two of the judges thereof.

RULE XXVII.

Motions and Arguments. See Depositions, § 54.

§ 107. On the Saturdays of each week shall be heard the motions and rules on the Current and Deferred Motion Lists.

§ 108. Cases on the Current Motion List not answered to shall be placed, of course, without further order, on the Deferred Motion List of the following week.

§ 109. Cases on the Deferred Motion List not answered to shall be placed of course, without further notice, on the General Motion List.⁶⁵

§ 110. On the third calling of the General Motion and Argument Lists, all cases not answered to shall be finally disposed of; that is to say, demurrers, motions in arrest of judgment and exceptions shall be stricken from the list; motions for rules for new trials, to take off non-suits, rules for new trials and reserved points shall be considered as submitted without argument, and decided upon the report of the judge before whom the case may have been tried. Rules for judgments, and all other rules *nisi*, shall be discharged.

§ 111. All motions made by counsel shall be put in writing and delivered to the prothonotary to be entered on the minutes and filed; the time of delivery to be endorsed by the prothonotary.

65. The following orders were made by C. P. 2 and 4 respectively: "And now October 24, 1891, it is ordered that a General Motion List be called on the second Saturday of each month, and that cases passed on the Deferred List shall not be heard until they appear on the General Motion List."

"And now, October 31st, 1891, it is ordered that a monthly General Motion List be called on the fourth Saturday of each month, and that cases passed on the Deferred List shall not be heard until they appear on the monthly General Motion List. Cases which shall not be argued upon the calling of the monthly list will go to the General Motion List of the following term."

§ 112. Upon rules to show cause of action, or to dissolve foreign attachments, the party who is to show cause is to begin and conclude; in all other cases, the party who obtains the rule to show cause is to begin and conclude.

§ 113. Unless otherwise specially directed, two counsel, but not more, may be heard on each side of a cause or matter on the Argument Lists, and one counsel on each side of a case on the Motion Lists. The counsel of the party having, according to the practice of the court, the right to begin shall state the grounds relied upon, and cite all the authorities intended to be adduced in their support. The counsel of the opposite party shall then be fully heard; if two, they shall follow each other in order of seniority. The counsel who began, if alone, shall reply; if two are concerned on that side, this duty shall devolve upon his colleague. The reply is to be confined to an examination of the points made by the opposite counsel.

§ 114. In all cases on the Motion and Argument Lists, the party who is entitled to begin, shall furnish to each of the judges a paper-book, containing a full and distinct statement of all facts conducive to a ready apprehension of the matter to be argued.

§ 115. Paper-books shall be either written in a plain, legible hand or printed, and endorsed with the names of the plaintiff and defendant, or petitioner, as the case may be, and also the names of the counsel furnishing the paper-book. Where the paper-book is made of a press copy the same shall be backed with foolscap paper, and the copy trimmed to correspond in size.

Paper-books in contested elections shall in all cases be printed.

§ 116. Upon every rule to show cause why judgment should not be entered for want of a sufficient affidavit of defence, the plaintiff shall furnish to each of the judges, before the hearing of the rule, a copy of the bill, note,

bond, book-entries, claim or other instrument of writing, or the affidavit of loan filed by plaintiff, and also a copy of the affidavit of defence filed by the defendant ; and whenever the copies are not furnished as aforesaid, the rule shall be discharged.

§ 117. In motions and rules for new trials, the party who obtains the same, shall furnish to each of the judges a copy of the reasons filed, with such a statement of the case or evidence as may be necessary to enable the court to understand the reasons ; such copy of the reasons to be furnished to the judge before whom the cause was tried within four days after the trial.

§ 118. In all arguments on the reports of auditors and referees, copies of the report and of the exceptions thereto, if any be filed, shall be furnished by the exceptant to each of the judges before the commencement of the argument. This rule shall also apply to arguments on reports of auditors.

§ 119. On rules to set aside sheriff's sales the paper-book must be furnished by the party obtaining the rule, and must set forth the price for which the premises sold, the value thereof, as resulting from a fair construction of the depositions, and the particulars of misdescription or other irregularity.

RULE.

Naturalization.

§ 119½ The fees for naturalization and certifying declaration of intention to become citizens shall be the same as those allowed to the clerk of the court of quarter sessions by the act of May 1, 1879. No abatement shall be made by the prothonotary, nor shall credit be given in any case.

1. Application for naturalization will be considered by the court only when presented at some session of the court

occurring between the first day of December and the first day of the following July. They shall be heard only on Saturdays in the courts of common pleas, and according to the following distribution of business, to wit :

On the first Saturday of each month, in court of common pleas No. 1.

On the second Saturday in court No. 2.

On the third Saturday in court No. 3.

On the fourth Saturday in court No. 4.

The hour for such hearings shall be 10 o'clock A. M.

No application will be heard in the court of quarter sessions.

2. The certificate of naturalization must be delivered by the clerk to the person applying for naturalization ; and the fees due thereon must be paid by the applicant and received by the clerk at the time when the application shall be approved by the court.

RULE XXVIII.

New Trials. See Motions and Arguments, § 117.

§ 120. All motions for new trials and reasons in arrest of judgment shall be made and offered within four days after the verdict,⁶⁶ and the motion must be made as aforesaid, notwithstanding the points have been reserved ; and whenever a non-suit is entered a motion to take the non-suit off must be made within the time aforesaid.

§ 121. Every motion for a rule for a new trial shall be heard upon the New Trial Motion List, and one counsel only shall be heard in support of the motion. If the rule shall be granted, it shall be placed on the New Trial Argu-

66. The court may entertain a rule for new trial *nunc pro tunc* if made within the term when the verdict was rendered, and no objection can be made that it was not finally disposed of until a subsequent term. It is competent for the court upon a proper showing to waive the limitation imposed by its own rules of practice, *Lance vs. Bonnell*, 105 Pa., St. 46 (Clark J., Feb. 4, 1884. Error to C. P. 2, Phila. co.).

ment List, and the party who is to show cause against the rule shall be first heard by one counsel only in reply ; but the court will order a further argument by other counsel in cases which, in their opinion, require it.

RULE XXIX.

Non Pros.

§ 122. Unless a declaration be filed within twelve months from the return day of the term to which an action is brought, or an appeal is entered, a *non pros.* shall be entered by the prothonotary as a matter of course, unless the parties otherwise agree in writing filed, or the court, upon cause shown, shall extend the time.⁶⁷

67. On appeals from a magistrate, the plaintiff has one year from the return-day to which the transcript was filed in which to file his declaration. *Elis vs. Pennington*, 2 W. N. C. 29. (C. P. 3, Oct. 2, 1875.) See sec. 126 *e*.

The plaintiff in such case cannot be nonsuited without notice. *Simons vs. Kutz*, 1 W. N. C. 553 (C. P. 1, June 26, 1875); but in *Seidel vs. Baker*, 6 W. N. C. 135 (Thayer P. J., Sept. 21, 1878), it was thought that the plaintiff must indicate an intention of treating the transcript as a narr in order to keep the case alive. An election filed, without notice to the defendant was held sufficient. *Garett vs. Wiley*, 13 W. N. C. 98 (C. P. 4, April 21, 1883). As to the right of plaintiff to treat transcript as a narr, see *Henderson vs. Miller*, 14 W. N. C., 422 ; *Herner vs. Frank*, 15 W. N. C. 30.

Plaintiff is not required to file his declaration before the defendant is served. The 12 months are to count from the date of service, *Ashton vs. Bell*, 19 W. N. C., 38 (C. P. 3, Dec. 30, 1886); *Everett vs. Niagara Ins. Co.*, 142 Pa. St., 322 (Mitchell, J., May 18, 1891).

"The rule of law is that when computation is to be made from *an act done*, the day on which the act was done must be included ; but when the computation is to be *from the day itself*, then the day on which the act was done must be excluded." Therefore the return day is not included in the computation. *Wayne vs. Duffy*, 1 Phila. 376 (Allison J., C.P. June 19, 1852).

The operation of this rule is suspended while a cause is before arbitrators. *McCall vs. Crousillat*, 2 S. & R. 167 (Tilghman, C. J., Yeates J., Dec. 1815).

Notary. See Affidavits.

RULE XXX.

Notices.

§ 123. All notices shall be in writing.

§ 124. If a party entitled to notice has not employed an attorney, it shall be sufficient to serve a copy on the party, or his bail to the sheriff, or special bail, if there be any; but if an attorney be employed, and marked on the record, all notices, pleadings and papers shall be served on him, except where an act of Assembly or rule of this court directs otherwise.

Paper Books. See Motions and Arguments.

RULE XXXI.

*Pleadings and Practice.*⁶⁸

§ 125. Appearances shall be entered by a written order filed and endorsed by the prothonotary, or one of his clerks, with the time of filing the same,—and no appearance *de bene esse* shall be allowed.

§ 126.⁶⁹ Rules to declare or plead⁷⁰ may be entered in the prothonotary's office at any time after the return day of the writ, and on failure to declare or plead within fifteen

68. "The time and manner of filing a narr, of appearing and pleading by the defendant, and of signing judgments for want of a plea. etc., are matters of practice regulated by rules of court, and the practice of the court, and irregularities in any of these respects are universally remedied by applications to the court, whose rules or practice is supposed to be violated." *Crosby et al. vs. Massey et al.*, 1 P. & W., 229 (Huston J. May, 1830).

69. Section 126 is new, being adopted by the court to carry out the provisions of the act of May 25, 1887.

70. In counting the time to plead after notice the day on which the notice is given is excluded, and if the final day falls on Sunday, it also is excluded and a plea entered on Monday is in time. *Marks's ex'tr. vs. Russell*, 40 Pa. St., 372 (Lowrie, C. J., Oct. 31, 1861).

days after written notice to do so,⁷¹ served upon the adverse party, or his or her attorney of record, with copy of declaration or statement, the prothonotary shall, on motion in writing, enter a judgment of *non pros.* against the plaintiff for want of a declaration or statement, or judgment against the defendant for want of a plea, or at the request of the plaintiff, enter a plea and place the case on the trial list. Judgments by default may be set aside or opened at the discretion of the court, when deemed necessary, for the purposes of justice. But the court or any judge thereof may enlarge the time to declare or plead on cause shown.

§ 126a. The plaintiff shall serve a copy of the statement of claim on the defendant, or his attorney of record if he has one, at least fifteen days before moving for judgment by default, except for want of an appearance.⁷²

Such copy⁷³ may be served by the sheriff with the writ, and his return shall be in lieu of the affidavit otherwise required.

If the defendant resides out of the county and has no attorney of record, the copy may be served on him wherever he may be found by messenger or registered letter.

If the residence of the defendant is unknown and he has no attorney of record, the copy intended for him, to be marked "defendant's copy," may be served by leaving

71. It is usual to serve a copy of the rule, but in *Stroop vs. Gross*, 1 W. & S., 139 (Rogers J., 1841), a motion requiring the defendant to plead was held tantamount to notice of a rule to plead.

72. Neither the act of May 25, 1887 nor the new rules to carry out its provisions, alter or abolish the right of plaintiff to take judgment for want of an appearance. *Humphrey vs. Smith*, 4 C. C. Rep., 169 (C. P., 1, Allison, J., October 15, 1887).

The defendant has all of the return day to enter an appearance, or to file an affidavit of defence where such is required. *Porter vs. Hower*, 9 C. C. Rep., 283 (Schuylkill Co., Bechtel, P. J., May 6, 1889).

73. The copy of statement served should set forth the names of all the plaintiffs of record and the affidavit thereto. *Wolf et. al. vs. Binder & Kelly*, 28 W. N. C., 133 (C. P., 1, May 9, 1891).

it with the prothonotary, who shall deliver it to the defendant or his attorney on request.

An affidavit of the time, place and manner of serving such copy shall be filed in all cases, except where service is made by the sheriff.

When the defendant's copy is filed in the prothonotary's office, the reasons for so filing it must be stated in detail in the affidavit.

§ 126*b*. Plaintiff's statement shall contain a specific averment of facts sufficient to constitute a good cause of action.⁷⁴

Such statement shall be supported by an affidavit⁷⁵ of the truth of the matter alleged as the basis of the claim, and shall in all cases, where damages are capable of liquidation, contain an explicit averment of the amount claimed to be justly due.

§ 126*c*. Any defence, legal or equitable, that might heretofore have been specially pleaded, or given in evidence under equitable pleas, shall be admissible under the plea of the general issue, upon notice given at least ten days before the day set for trial.

Such notice of special matters of defence shall contain

74. The concise statement required by the act of 1887 is one that expresses in comprehensive and brief terms, the facts which constitute the cause of action. If the plaintiff add details of evidence, they need not be replied to in the affidavit of defence. *Anchor Saving Bank vs. Stoneham Tannery Co.*, 8 C. C. Rep., 303 (Brown, S. J., Warren co., February 17, 1890). The rules require a plaintiff who sues upon a negotiable instrument to aver that he is the holder of it. *Goldbeck vs. Brady*, 44 L. I., 421 (C. P., 3, Finletter, P. J., October 22, 1887). When the affidavit is made by a stranger the reason should appear. *Goldbeck vs. Brady* (supra).

75. A copy of the affidavit supporting the statement must be served with the copy of the statement. *Wolf et. al. vs. Binder & Kelly*, (supra). The statement in trespass must be sworn to. *Krauskopf vs. Stern*, 21 W. N. C., 185. An amendment to a statement must be sworn to. *Ickenger vs. R. R. Co.*, 20 W. N. C., 333 (C. P., 3, October 1, 1887).

a specific averment of facts sufficient to constitute a good legal or equitable defence.

Copies of such notice shall be filed of record, and also served on the plaintiff or his attorney aforesaid, at least ten days before the day set for trial.

In default of such notice the defence shall be confined to matters strictly admissible under the plea filed.⁷⁶

§ 126*d*. (As adopted by Courts 2, 3 and 4). In default of such requisites the statement or notice may be demurred to, or a rule may be had for a more specific statement or notice.⁷⁷

On such demurrer the court may give final judgment or order a more specific statement or notice; and where such more specific statement or notice is ordered and not furnished, the court may enter a non-suit or judgment by default, as the case may require.

§ 126*d*. (As adopted by court No. 1). In default of such requisites in the statement or notice, a rule may be had for a more specific statement or notice.

76. Special pleading is abolished by the act of May 25, 1887, sec. 7. *In assumptit*, the plea of the general issue shall be "*non-assumptit*," and in addition the defendant may plead payment, set-off and the bar of the statute of limitations, but no other plea. In trespass the only plea shall be "not guilty." If notice of special matter is not given as required by the rule it will be rejected. *Mehaffy vs. Little*, 1 Watts, 314, (Kennedy, J., May, 1833). The notice must be specific and particular, 3 W. & S., 361 (Huston, J., 1842).

Under a plea of payment, evidence of payment in goods is admissible. This not matter of set off. *Richabaugh vs. Dugan*, 7 Pa. St., 394 (Coulter, J., March 20, 1847).

See *Ogden vs. Lukens*, 29 W. N. C., 258 (C. P. 3, Dec. 16, 1891).

77. In actions to recover damages for negligence the plaintiff may be uled to give a more specific statement. The statement must set out the particular acts complained of, and aver the actual damage. *Childs vs. Penna. R. R. Co.*, 27 W. N. C., 510 (C. P. 1. March 7, 1891), but the plaintiff is not required to specify the amount claimed for each item of damage. *Mallon vs. Gray*, 28 W. N. C., 93 (Arnold, J., C. P. 4, May 16, 1891).

And where such more specific statement or notice is ordered and not furnished, the court may enter a non-suit or judgment by default as the case may require.

§ 126e. In all cases of appeal from judgments of magistrates, the pleadings and procedure shall be the same as in like causes commenced in court.⁷⁸

§ 127. No dilatory plea shall be received, unless the same be filed within four days from the service of the copy of the declaration, nor unless the party offering such plea, does, by affidavit, support the truth thereof,⁷⁹ or show some probable matter to induce the court to believe that the allegations in such dilatory plea are true.

§ 128. If the plaintiff in any suit in which the defendant is entitled to a bill of particulars, do not, within the space of three months after demand, furnish the same, the court may order the common counts to be stricken from the declaration, or if there be none but common counts, may order a non-suit upon motion of the defendant and no sufficient cause shown to the contrary.⁸⁰

§ 129. All demurrers shall set forth specially the grounds or reasons of the demurrers, whether they be such as can be taken advantage of on general demurrer or not.

§ 130 is rescinded.

78. See note 67.

79. A plea of *non tenure* in action of dower *unde nihil habet* being a dilatory one, an affidavit of its truth must be filed. *Casporus vs. Jones*, 7 Pa. St., 121 (Rogers J., Nov. 9, 1847).

In the absence of a rule of court requiring a plea in abatement to be filed within any particular time, a plea in abatement filed after the case is on the trial list is too late. *Murphy vs. Chase*, 103 Pa. St., 260; *Union Type Foundry vs. Kittanning Ins. Co.*, 48 L. I., 147 (Paxson, C. J., Nov. 3, 1890).

80. The correct practice is for defendant to file an affidavit of demand for bill of particulars. *Linderman vs. Land Co.*, 15 W. N. C., 192 (C. P. 4, Oct. 18, 1884). *Kitchen vs. Nat. Life Ins. Co.* id., 548 (C. P. 1, March 7, 1885).

§ 131. When the defendant pleads a set-off, unless the matter be fully and specially set forth in the plea, or where he intends, under the plea of payment, to defalk his own account or claim against the plaintiff's demand, or any part of it, he shall give a full and particular notice in writing of such intended set-off, at least ten days before the day for which the cause is set down for trial, or he shall not be allowed to give in evidence, under such plea, any set-off, nor under such notice any matter of set-off not therein particularly set forth⁸¹.

§ 132. The time of filing the declarations, pleas, replications, and all other pleadings and papers, shall be distinctly marked in the prothonotary's docket.

§ 133. In all suits⁸² a copy of the declaration and every subsequent pleading shall be served by the party, or his attorney filing the same, on the opposite party or his

81. In *Sullivan vs. Jones* 5, Wh. 367 (Rogers, J., Feb. 29, 1840), the supreme court said, "The rule of court is easily observed, and is so clearly beneficial, that it ought not to be relaxed on slight or frivolous pretexts."

Notwithstanding the special matter is set forth in the affidavit of defence which may have been filed, notice must be given, as required by the rule, unless it be set forth in the plea.

Sullivan vs. Jones (supra); *Philips vs. Railroad Co.*, 107 Pa. St., 472 (Green, J., Jan. 5, 1885).

Notice must also be given, under the rules, even though the same evidence was offered at a previous trial. *Reitzheimer vs. Bush*, 2 Pa. St., 88 (Rogers, J., Dec. 26, 1845); *Beyer vs. Fenstermacher*, 2 Wh. 96 (Kennedy, J., 1836).

Rules to strike off special pleas should be placed on the miscellaneous argument list. *Osner vs. Vollrath*, 15 W. N. C., 300 (C. P. 3, Nov. 15, 1884).

82. An appeal from the judgment of a justice of the peace was held an action within the meaning of a similar rule. *Craig et al. vs. Brown*, 48 Pa. St., 202 (Strong, J., 1864). See section 126e. If the plaintiff elects to treat the transcript as a narr, and rules the defendant to plead to it, he is bound to furnish a copy. *Herner vs. Frank*, 15 W. N. C., 30 (C. P. 2, June 9, 1884).

attorney of record⁸³, otherwise such declaration or other pleading may be treated as a nullity : *Provided, however*, That it shall not be necessary to serve a copy of the declaration upon a defendant or defendants who have not appeared in the action : *And, provided further*, That notwithstanding no appearance may have been entered at the time of filing the declaration, no judgment for want of a plea shall be entered, unless a copy of the declaration has been served on the defendant or his attorney with the rule to plead.

§ 134. If the papers in a cause are mislaid or lost, and cannot be found when the case is called for trial, they may be supplied by such copies or other duly authenticated copies of the pleadings.

RULE XXXII.

Publication of Notices.

§ 135. The *Legal Intelligencer* shall be the weekly newspaper for the publication of notices, under the act of April 5th, 1855.

RULE XXXIII.

Publication of Writs.

§ 136. Whenever, in pursuance of the 34th section of the "act relating to executors and administrators," any administrator, heir, devisee, or guardian, shall be made a party in an action, and shall reside out of the county of

83. See *Association vs. Cunningham*, 16 W. N. C., 510 (C. P. 3, Oct. 31, 1885), where the court discharged a rule for judgment of *non pros* for want of a narr, counsel stating that no copy of the narr had been served on him.

If the plea is filed of record but no copy served on the plaintiff, the latter should file an affidavit that no copy was served, and take judgment for want of service of such copy. *Limon vs. Howard*, 1 W. N. C., 389 (C. P. 3, May 1, 1875). A judgment for want of a plea in such a case will be stricken off. *Fleshman vs. Merrick Price Co., limited*, 27 W. N. C., 572 (C. P. 1, Biddle, J., March 12, 1891).

Philadelphia, publication of the writ shall be made by the sheriff in the *Legal Intelligencer* and one daily newspaper published in the city of Philadelphia, once a week, for two successive weeks, and such publication shall be regarded as service of such writ.

§ 137. Publication of the *alias* writs of summons, required by the act of Assembly entitled "an act for better securing the payment of ground-rents," shall be made by the sheriff in the *Legal Intelligencer*, and such daily newspaper as he may choose, once a week, for two successive weeks prior to the return day of such writs.

§ 138. The advertisement by the sheriff of writs of *venditioni exponas* (or *fieri facias* against real estate, where inquisition and condemnation have been waived) and *levari facias*, under the acts of assembly relating to execution, shall be three times in the *Legal Intelligencer*, and once a week for three successive weeks in two daily newspapers, and the first advertisement in said daily newspapers shall not be less than twenty-one days before the day of sale.

RULE XXXIV.

Records.

§ 139. No record shall be taken from the office of the prothonotary, unless by permission of one of the judges, for special cause shown at the time of application.

§ 140. The prothonotary shall not be required to enter upon the records any written paper which does not set forth the *court*, *term* and *number* of the suit.

§ 141. The entry of satisfaction, settlement or discontinuance, may be made by the party or his attorney of record; but such entry shall always be attested by the prothonotary, or one of his clerks, with the date of entry. In no other case shall any attorney be allowed to make any entry upon the dockets or other records of the court.

RULE XXXV.

Referees. See Motions and Arguments § 118.

§ 142. Whenever any report of referees is filed, notice thereof shall be served on the opposite party or his attorney, who shall have four days (excluding Sundays) from such notice to file exceptions, which shall be accompanied with an affidavit or affidavits as to facts which do not appear on the face of the proceedings, and no execution shall issue until the expiration of the said four days⁸⁴.

RULE XXXVI.

Replevin.

§ 143. In every action of replevin if the defendant does not appear at the return day of the writ, and he has been duly summoned, the plaintiff having filed his declaration, may file a common appearance for the defendant, and proceed in the cause by ruling him to plead as in other cases.

RULE XXXVII.

Security.

§ 144. Wherever execution is issued more than seven days from the rendition of judgment, and the defendant is entitled to a stay of execution upon the entry of security under the act relating to executions, passed the 16th day of June, 1836, the execution shall be set aside upon the entry of such security, and the payment by the defendant of the costs of the execution: *Provided*, The money has not been made on such execution.

§ 145. Exception may be taken to the sufficiency of security for stay of execution within four days after the

84. This rule does not apply to the report of a referee under the Act of May 14, 1874. It is not necessary that counsel should have notice of the filing of the report of such a referee. *Eyster et al. vs. McCulla et al.* 3 W. N. C. 219 (C. P. 3 Nov. 21, 1876). But see 4 May, 1889, P. L. 80, regulating the filing of report of referee, under Act of 1874, notice to counsel and exceptions. *Kille vs. Reading Iron Works* 26, W. N. C., 1.

expiration of thirty days from the entry of the judgment ; and the defendant, within eight days after notice of exception, shall justify the security before the prothonotary, giving twenty-four hours notice of justification, subject to an appeal to a judge.

§ 146. In all cases where surety is required to be approved by a judge or the prothonotary, the party presenting such surety for approval, shall at the same time present to the judge or prothonotary, an affidavit signed by the surety offered and duly sworn or affirmed upon a blank to be furnished by the prothonotary in the following form :

<i>vs.</i>	}	C. P. No.
		Term, 18
		No.
		Security for
		Amount, \$

being about to become surety in the above entitled case, and being duly according to law, deposes and says :

First.—I reside at
and my occupation is

Second.—I am the owner of real estate in the County of Philadelphia as follows :

Third.—The value of said real estate is and the rent It is assessed for the purposes of taxation, at the value of and is so assessed in my name.

Fourth.—There are incumbrances against the said real estate as follows :

and there is no other judgment binding the said land, or

mortgage, ground rent or other incumbrance of any kind affecting the same except those named.

Fifth.—The title to the said real estate is in my own name, and the same is not subject to any trust.

Sixth.—I obtained the said real estate in _____ by _____ from
_____, and my deed therefore is recorded.

Seventh.—There are judgments against me

Eighth.—I am not surety in any other case, or for any public officer.

and subscribed, this day of
18 , before me

N. B.—This affidavit must be sworn to before the prothonotary or a commissioner of bail appointed by him.

Notice of this application for approval of surety was given to the _____ by writing on the _____ day of _____, 18 _____,

The above named _____ is approved as surety in the above case.

And notice in writing of the time and place of the application, stating the name of the surety to be offered, his residence and occupation, and the property of which he is possessed, shall be given to the opposite party forty-eight hours before the application, in all cases except attachments under the act of 1869, domestic and foreign attachments, writs of replevin not between landlord and tenant for goods distrained for rent, and special injunctions.

RULE XXXVIII.

Sheriff's Deeds.

§ 147. Before the acknowledgment of any deed or deeds, executed by the sheriff for any lands or tenements sold by him, under or by virtue of any process from any these of courts, shall be received or taken, the process under which such sale shall have been made shall be duly returned and filed with the prothonotary.

§ 148. The first Mondays of each term and Saturday of each week, are appointed for the purpose of allowing the acknowledgment of deeds by the sheriff to be made by public proclamation in open court. But they may be acknowledged at such other times as the court may permit.

§ 149. *First.*—Returns by the sheriff upon process for the sale of real estate, made in pursuance of the Act of Assembly entitled “An Act relative to lien creditors becoming purchasers at judicial sales and for other purposes,” passed the 28th day of April, 1846, shall be read in open court on the Saturday next following the day on which the return shall be made.

Second.—The sheriff shall on the day when his return is read in court, give notice thereof to all persons who have notified him that they claim an interest in the proceeds of any real estate returned sold as aforesaid, and any of such persons may file exceptions to the right of the purchaser mentioned in the return, to the said proceeds or any part thereof, but such exceptions must be founded upon material facts in dispute, the nature and character of which must be set forth and verified by affidavit, or upon some matter of law appearing of record.

Third.—Exceptions to the right of the purchaser to the proceeds of any sale as aforesaid, must be filed in the office

of the prothonotary on or before the Wednesday next following the day on which the return of sale shall have been read as aforesaid, but not later.

Fourth.—The party filing exceptions as aforesaid, shall thereupon enter of course, in the office of the prothonotary, a rule upon the purchaser to show cause why the sale should not be set aside, which rule shall be made returnable on the Saturday next following the day upon which the exceptions shall be filed as aforesaid, of which rule he shall forthwith give notice to the purchaser or his attorney.

Fifth.—On the return of the rule entered as aforesaid, if the exceptions are deemed sufficient, the court will appoint an auditor to make a report of distribution of the proceeds of the sale, or direct an issue to determine the validity of the lien of the purchaser, if the case shall require it, and thereupon all further proceedings under such rule shall be stayed until the report of the auditor shall be made and approved by the court, or the issue directed as aforesaid shall be determined. If the exceptions are insufficient, the court will dismiss the same and discharge the rule.

Sixth.—The report of auditors appointed as aforesaid, shall be subject to the rules applicable to the reports of auditors, distributing the proceeds of sheriff's sales in other cases. And the party in whose favor the verdict, on an issue directed as aforesaid, shall have been rendered, shall be entitled to enter judgment thereon, according to the rules applicable to verdicts in other cases.

Seventh.—If it shall be the judgment of the court upon the report of the auditor appointed as aforesaid, or upon the verdict of the jury, that the purchaser is not entitled to receive the proceeds of the sale, or any part thereof, the rule entered as aforesaid shall become absolute of course, at the expiration of ten days after the report has been confirmed or judgment entered, unless the purchaser shall, within that time, pay or cause to be paid to

the sheriff who made the sale, the whole of the purchase-money, or so much thereof as it shall be adjudged he is not entitled to retain.

Eighth.—If no exceptions shall be filed as aforesaid, or if the exceptions shall be dismissed by the court, or it shall be otherwise determined that the purchaser is entitled to the proceeds of the sale, or if the purchaser shall pay the purchase-money or such part thereof as may be adjudged to be payable by him, the sheriff shall be allowed to acknowledge his deed for the estate sold as aforesaid, and deliver the same to the purchaser thereof on the following Saturday, or on any other subsequent day appointed by the court for the acknowledgment of sheriff's deeds, unless a motion shall be pending to set aside the sale for irregularity of the proceedings, or for some other cause.

§ 150. All sheriff's deeds hereafter to be acknowledged shall be recorded by the prothonotary in the sheriff's deed book in words at length.

RULE XXXIX.

Subpoena.

§ 151. No *subpoena duces tecum* for a public record or paper shall be issued without the special order of a judge.

§ 152. Subpoenas for witnesses residing within the city and county of Philadelphia shall be taken at least five days previous to the day assigned for the trial of the action in which their attendance shall be required, or such action shall not be continued on account of the absence of any such witness, if he were, or might be found at his residence within that period.⁸⁵ But this rule shall not dis-

85. This "rule applies only to applications for a continuance on account of the absence of witnesses who might have been found within reach of process, within the five days." It does not require that a witness should have been subpoenaed five days before the day set for trial in order to compel his attendance. *Scriber vs. Reeves*, 1 Phila., 284 (Dec. 27, 1851, D. C., Sharswood, P. J.).

pense with the obligation to take the deposition of any such witness where the party requiring his attendance knows, previously to that period, that such witness intends to be absent from the county at the time of the trial.

Trespass. See Bail. Sec. 25.

RULE XL.

Trial.

§ 153. No cause, when reached in order on the trial list, shall be left open, or continued in consequence of a pending engagement of counsel in any other than a court of this commonwealth sitting in the city of Philadelphia, or the district or circuit court of the United States for the eastern district of this State.⁸⁶

§ 154. Where more than one counsel are concerned on the same side, the cause shall not be left open on account of the sickness or absence of one of them, nor on account of any engagement out of the court in which the cause is pending, but in such case the cause may, by consent, be placed at the foot of the list. And if any counsel shall be actually engaged before one of the judges of the court in which the cause is pending, at the time of the calling of the cause for trial before another judge of the same court, in which he is also retained as counsel, such latter cause shall be left open, with the privilege of being called on by either party, immediately after the prior engagement shall be terminated, in preference to any other cause not then under trial, or previously left open under this rule.

§ 155. No cause, when reached in its order upon either the trial or argument list, shall be continued, left open, or put at the foot of the list, by reason of sickness, or temporary absence on public business, or an engagement in another court, or before another judge of the court in

86. See *Fritz vs. Church*, 3 Phila., 236.

which the cause is pending, unless no one of the counsel concerned on the same side shall be able to conduct the trial or argument: *Provided*, That where more than one counsel are concerned on the same side of a cause on trial before another court, no one shall be considered as engaged within the meaning of this rule, who, having a colleague in the cause at liberty to remain till the end of the trial, shall have concluded his address to the jury. And where more than one counsel are concerned on the same side of a cause on trial before another judge of the same court in which the cause is pending, after the evidence is closed in such cause, no one shall be considered as engaged within the meaning of this rule, except the counsel on whom the duty of addressing the jury shall devolve: *Provided also*, That nothing in this rule contained shall prevent the continuance of a cause where the usual legal grounds therefor shall be laid before the court.

§ 156. The party calling a witness shall when so required, state briefly the point or points which he proposes to establish by his testimony.

§ 157. The detention for the purpose of noting his testimony, of a witness under examination, shall be regulated by the discretion of the judge, in the particular cause on trial.

§ 158. After the evidence in a cause on trial is closed neither party shall be entitled to address the jury by more than one counsel. If evidence has been received on behalf of each party, the counsel having the right on the pleadings to begin, shall sum up, stating explicitly the grounds upon which he intends to rely, and citing such authorities as he may deem pertinent. One of the counsel of the opposite party may then address the jury as fully as the nature of the defence may require. Afterwards the counsel who commenced the summing up may conclude, restricting himself to enforcing the grounds previously

taken by him, and combatting the views of the opposite counsel. When the party *not* entitled to begin shall produce no testimony, the counsel of the other party shall be confined to his address in summing up, and shall not be heard in reply.

§ 159. No cause, when reached on the trial list, shall be passed on account of an attachment for witnesses, unless it shall have been applied for and issued within an hour after the opening of the court on the day on which the cause is marked for trial, except it be shown that the witness or witnesses were in attendance at that time, and departed without leave.

§ 160. When application is made for the continuance of a cause on the trial list, because of the absence of a witness not served with a subpoena, ground must be laid by affidavit of the party or his agent, setting forth the fact or facts which it is believed the witness will prove, the grounds of belief that he will do so, the efforts made to procure his attendance, specifying the same minutely and particularly, and the grounds for believing that a continuance will enable the party to procure the testimony ; which affidavit shall be filed of record, and an admission in writing by the other party to be read in the cause, that the witness, if called, would testify as set forth in the affidavit, shall be a sufficient cause for refusing the application.

§ 161. Points upon which the judge is desired to charge the jury on the trial of the cause, shall be plainly written, and so framed that the answer shall be full, direct, and explicit by a simple affirmation or negation. A copy of the points shall be presented to the court at the close of the evidence, and before the commencement of the summing up, or the judge may at discretion refuse to charge the jury upon the points proposed.

§ 162. Either party excepting to the charge of the court to the jury shall, before the jury have withdrawn to consider their verdict, state distinctly the several matters of law in such charge to which he excepts; and no general exception to the whole of the charge shall be allowed by the court, but the exceptions to the matters of law so distinctly stated, and those only, shall be allowed in the bill of exceptions.⁸⁷

RULE XLI.

Trial List.

§ 163. No cause shall be placed on the trial list until after issue joined, nor without the written order of one of the parties or his counsel on the trial order book.⁸⁸ Nor shall any cause be placed on the trial list for any period, unless the same shall be at issue before the issuing of the venire for such period. It shall be the duty of the pro-

87. See Rule XII. In *Collins vs. Leafy*, 124 Pa. St., 203 (Mitchell, J., Feb. 11, 1889), the supreme court in speaking of this rule, said: "This is a good rule. It tends to correct accidental errors in the statement of either the facts or the law, before they have had opportunity to do injury, and to encourage trials upon the merits of the real issues, and not upon trivial points or small inaccuracies, subsequently worked up under the spur of an adverse verdict, into undue importance.

"But the rule is meant to facilitate, not to impede the fair and accurate conduct of litigation, and they may therefore, be cases where it is properly relaxed by the judge, for whose protection it was mainly enacted."

If the trial judge certifies that no exception was taken, the supreme court is precluded from entering upon any examination of the error which complains of the charge of the court. *McAdams' Executors vs. Stilwell*, 13 Pa. St., 90 (Bell, J., 1850).

The judge may allow a general exception to the whole charge and sign the bill in that form. This is entirely within his discretion to do. *Collins vs. Leafy* (supra).

88. An agreement not to place a case on the trial list without the consent of both parties is binding, and will be enforced by the court. *Hunsicker vs. Williston*, 1 Mona., 585¹ (*Per Curiam* S. C., March 25, 1889)

thonotary, at least thirty days before the commencement of any period appropriated to the trial of causes by jury, to make out a complete list of all causes entitled to be placed on the trial list for such period; and none of the causes on such list shall be continued to another term, unless at the joint request of the counsel, signified by writing filed with the prothonotary at least three weeks before the commencement of such period.

§ 164. Actions for the recovery of the wages of manual labor, under the Act of 22d March, 1877, shall not be placed in advance of their regular position on the trial list, without an order⁸⁹ of the court made upon examination of the statement of plaintiff's claim filed in accordance with said act.

§ 165. Whenever a case is omitted from the trial list by the mistake of the clerk, either party shall have the right to order the same on the trial list, provided ten days notice be given to the opposite party, or his attorney, before the day on which the case is marked for trial.

Trover. See Bail, § § 25, 26.

Trustee. See Assignees' and Trustees' Accounts; Auditors and Auditors' Reports.

Warrant of attorney. See Judgment.

89. If an order of court to advance the case is not obtained the case will be stricken from the list. *Teagel vs. Moore*, 26 W. N. C., 314 (C. P. 1, May 10, 1890). See *Creary vs. McAnnally*, 14 W. N. C., 255 (C. P. 2, Fell, J., January 16, 1884).

RULES OF THE ORPHANS' COURT
FOR THE
COUNTY OF PHILADELPHIA.

RULE I.

Accounts.

§ 1. For convenience in filing, accounts shall be stated with debits preceding credits, upon paper of the ordinary legal cap size, with the sheets fastened at, and folding over from the top of the page.

§ 2. The date of all receipts and disbursements must be accurately stated; administration¹ must not be blended with distribution, nor principal with income, but a separate account must be given of each.

Accounts of the proceeds of sale of real estate² must also be separate from the administration account.

RULE II.

Appeals from Register.

§ 1. No appeal from a judicial act or decision of the register of wills will be considered by the court, unless such appeal has been first filed with the register, the

1. The blending of the administration with the distribution account is erroneous. *Yundt's Estate*, 6 Pa. St., 35 (Gibson, C. J., 1847); *Jones' Appeal*, 11 W. N. C., 554 (Trunkey, J., January 2, 1882).

2. See *Billington's Estate*, 3 Rawle, 48 (Huston, J., January 10, 1831); *Comm. vs. Hilgert*, 55 Pa. St., 236 (Read, J., February 14, 1867).

security as required by the act of June 6, 1887, (P. L. 359), duly entered, and the record of the proceedings had before him, with the testimony, duly certified by the register and filed in this court.

§ 2. In all cases where any party in interest shall take an appeal from a judicial act or decision of the register, the appellant shall present a petition to the court, setting forth what has been done and the facts and circumstances upon which he relies;³ whereupon, if such facts and circumstances appear to be *prima facie* sufficient, a citation will be granted on all the parties interested (whose names must be set forth in the petition) to show cause why the said appeal should not be sustained, and the judicial act or decision complained of set aside.

§ 3. Where an issue *devisavit vel non* is asked for the form of the issue or issues must be specifically set forth in the petition.

§ 4. The third week of each month, except during vacation, will be devoted to the hearing by one of the judges of testimony of witnesses upon appeals from the register, and demands for an issue *devisavit vel non*; and also where any question of kindred or other disputable and difficult matter has arisen before the register, and upon request of the parties interested, or either of them, is certified by him to the court for determination: Act of March 15, 1832, Sec. 25, P. L. 146.

§ 5. Said hearings when commenced shall proceed continuously; and continuances will not be granted, except upon cause shown and satisfactory to the judge by whom the hearing is held. Depositions of witnesses, commissions.

3. On appeal from the register, the petition does not comply with the rules of court, if it merely alleges undue influence without stating the facts or the circumstances under which the undue influence was exerted. *Wright's Estate*, 9 C. C. Rep., 235 (Hanna, P. J., December 20, 1890).

for taking testimony, and subpoenas for witnesses, shall be taken as now provided by rule of court.

And the testimony taken before the register, including exhibits admitted in evidence, shall, upon being certified by him, be used at said hearing, as also now provided by rule of court upon argument of appeals from the register.

Provided, however, that either party may at said hearing call for examination or cross-examination any witness or witnesses previously examined before the register.

§ 6. The judge before whom the testimony is taken shall determine preliminarily whether an issue *devisavit vel non* shall be granted; and whether an issue upon any other matter of fact, arising upon the appeal, shall be granted, together with any question of kindred or other disputable or difficult matter certified by the register; subject, however, to exceptions to his ruling, which must be filed prior to the third Saturday after the order or decree shall be filed with the clerk, otherwise such order or decree to be confirmed absolutely. And said exceptions shall be heard by the court in banc as in case of exceptions to adjudications.

§ 7. The testimony shall be taken by the stenographer of the court, and filed of record.

RULE III.

Appraisements Under Act of April 14, 1851. P. L., 613.

§ 1. All appraisements made under the provisions of the fifth section of the Act of Assembly of April 14th, 1851, and its supplements, and presented to the Orphans' Court for approval, shall be accompanied by a petition by the party asking the approval, in which shall be fully set out the facts and circumstances upon which the right of the party to claim a retention of the property is founded; and notice of the filing of said appraisalment shall be published

twice a week for two weeks in a public newspaper, and twice in the *Legal Intelligencer*; and unless exceptions be presented before the second Saturday after the expiration of said notice, the court will then take action upon the said appraisement.

§ 2. Applications under the act of June 4, 1883, P. L., 74, entitled "an act providing the manner in which widows' and childrens' exemption in decedents' estates shall and may be set aside to them in certain cases," shall be by petition of any party interested, setting forth the facts and circumstances, and the right and title by which such exemption is claimed, with a schedule of the property selected to be appraised and set apart, and a prayer for the appointment of two appraisers to appraise and set aside the property so selected. Upon the return of said appraisement, notice of the presentation and filing of said petition, return and appraisement, shall be given in the same manner as now provided, in the case of appraisements under the act of April 14, 1851, and its supplements. And unless exceptions be filed before the second Saturday after the expiration of said notice, the court will then take action upon said appraisement.

RULE IV.

Attorneys.

§ 1. The rules with regard to the board of examiners, the registry of students and the admission of attorneys, shall be those adopted by the courts of common pleas of Philadelphia county.

§ 2. Every attorney when employed by any party interested shall have his name marked of record, by the clerk, in the proceeding with reference to which he has been so employed. And so long as the name of any attorney remains on the record, he shall be considered as

the attorney of the party for whom he is so marked, and liable to be served with such notices as may properly be served on him as attorney in such proceeding. And the name of such attorney shall not be stricken from the record in such proceeding unless upon motion by leave of court.

§ 3. No attorney of this or any court shall become surety in any bond given in any proceeding pending in this court, except by special leave of the court.

§ 4. A member of the bar who shall be convicted of an immoral or criminal offence in a criminal court of this or any other state, upon which conviction, judgment has been rendered, or who, by concealment or escape, evades the imposition of such judgment, shall not be permitted to practice in this court; and, any member of the bar who has been suspended or prohibited from practicing in any of the courts of this state shall not be permitted to practice in this court while such suspension or prohibition continues.

§ 5. Every attorney, now or hereafter to be admitted to practice in this court, who has not an established office for the conduct of his practice within the county, shall register in the office of the clerk, in a roll to be kept for that purpose, his name and the address of an office within the county, or a post-office address. And such office shall be deemed to be the office of such attorney, and a service thereat of all papers, notices and letters, required by law to be served, shall be deemed a personal service upon such attorney. If a post-office address only is registered, then the deposit in the post-office at Philadelphia of a registered letter directed to the registered post-office address, shall be deemed equivalent to a personal service. In default of the registration, as herein provided for, a deposit with the clerk, of any paper, notice or letter, as aforesaid, shall be deemed equivalent to a personal service.

RULE V.

Discharge of Executors, Administrators, Guardians and Trustees.

§ 1. All applications for the discharge of executors, administrators, guardians and trustees, shall state that the partial or final account, as the case may be, of such executor, administrator, guardian or trustee, has been adjudicated and confirmed absolutely ; that the entire estate has been paid and transferred to the parties entitled thereto, or to the successor in the trust, if any ; and that no other moneys or property in the estate has been received by them, since the filing and adjudication of the account. Accompanying all such applications shall be the agreement in writing of all parties interested in the estate, or the successor in the trust, verified by affidavit, consenting that such application for discharge be granted by the court. And in the case of administrators, guardians and trustees, such agreement shall also be signed by the surety or sureties.

§ 2. Where a discharge is asked for by a guardian during the minority of his ward, a petition must be presented setting forth the grounds of the application, and asking for the appointment of a suitable person to appear and act for such ward in the settlement of the guardian's account, and notice of the application must be given to ward, if over fourteen years of age, or if under that age, to the next of kin of full age.

§ 3. Such petition must be accompanied by the account of the guardian, which if proper grounds for a discharge are shown by the petition, shall be placed upon the next audit list. Upon the settlement and confirmation of such account, and the surrender and payment of the balance shown thereby to a subsequent guardian, or to such other person as the court shall appoint to receive the estate, such discharge may be granted.

RULE VI.

Depository of the Court.

§ 1. The "Pennsylvania Company for Insurance on Lives and Granting Annuities" shall be the depository of this court.

All moneys which heretofore have been or shall hereafter be directed to be paid into court, shall, upon the receipt thereof by the clerk, be immediately deposited by him with the said company to the credit of the court in the particular estate or proceeding to which they may respectively belong; and the said company shall keep a separate account of each of said payments, designating the same by the name of said estate or proceeding.

No money shall be paid out of court by said company, except on the checks of the clerk accompanied by a certificate, endorsed on said checks under the hand of the clerk and the seal of the court, that the money was ordered to be paid, and countersigned by one of the judges of this court.

Whenever ordered by the court, and on the last day of March, June, September and December of each year, the clerk shall have his bank or deposit book settled in said company, and shall, whenever ordered by the court, and on the first Monday of January, April, July and October, make and present to the court an account of the moneys paid into and out of court during the preceding three months, and exhibit his deposit book as a voucher for the correctness of said account.

RULE VII.

Evidence.

§ 1. The rules of the courts of common pleas of the county of Philadelphia, with regard to the depositions of witnesses and the commissions for taking testimony are

adopted by this court, so far as concerns the taking of depositions to be used before an auditing judge.

§ 2. Subpœnas for witnesses residing in the city of Philadelphia, shall be taken at least five days before the day assigned for the audit of any account in which their attendance shall be required. But this rule shall not dispense with the obligation to take the deposition of any such witness, where the parties requiring his attendance know previously to that period that such witness intends to be absent from the jurisdiction at the time of the audit.

RULE VIII.

Guardians and Trustees.

§ 1. Petitions for the appointment of guardians shall set forth the date of birth or age, as near as may be, and present place of residence of the minor, and shall be accompanied with statements, on oath or affirmation, of the amount of personal property and rents of real estate which may probably come into the guardian's hands, and an affidavit by some person known to the court, personally or by character, stating that the person recommended is of respectability and property, to whom such a trust can safely be entrusted, or to that effect, and that such person is neither executor nor administrator of any estate in which the minor has an interest⁴.

4. The sixth section of act of March 29, 1832, P. L., 5, provides that "No executor or administrator shall be admitted or appointed by the Orphans' Court, guardian of a minor having an interest in the estate under the care of such executor or administrator: *Provided*, that nothing herein contained shall be construed to extend to the case of a testamentary guardian." The reason of this act of assembly may be found in the case of *Senseman's Appeal*, 21 Pa. St., 331 (Lewis, J., 1853).

It is not necessary that the lands devised to the minor should be under the care of the executor in order to disqualify him. The fact that the minor is interested in the estate and that he is executor of the will of the person from whom the estate is derived is sufficient to disqualify.

§ 2. When the clerk of the court or other person shall be appointed guardian *ad litem* it shall be his duty to represent the interests of his wards, before the court, master or auditor, and upon cause shown he may employ counsel, whose compensation shall be fixed and paid as the court may direct.

§ 3. In every case where the amount of security required to be given by a trustee or guardian shall be two thousand (\$2,000) dollars, or in excess thereof, the security or securities shall be approved by the court; but when less than that amount, they may be approved by the clerk, in pursuance of an order of the court previously made.

§ 4. When any corporation shall hereafter be appointed trustee or guardian by this court, it shall be upon condition that such corporation shall not invest any of trust funds in coupon bonds or other securities that pass by delivery.

Every such corporation shall be required to invest all trust funds, in its name as trustee or guardian, as the case may be, and keep the same separate and apart from its own funds.

§ 5. No certificate of the appointment of any guardian or trustee shall be given by the clerk of the court without security (if required) having been first entered.

And that the executor has settled his account makes no difference. *Senseman's Appeal*, 21 Pa., 331 (supra).

But where the property of the minor is derived from another source, the fact that the proposed guardian is executor of its mother's will and its testamentary trustee will not qualify him where the only fund likely to come into his possession is a pension from the government. *Westcott's Estate*, 2 W. N. C., 652 (O. C., June 24, 1876).

The court will not appoint an executor, guardian of the person of a minor if he be executor of an estate in which the minor is interested; even though there be a guardian of the estate of the minor. *Estate of Hume Minors*, 11 W. N. C., 123 (Hanna, P. J., January 9, 1882).

RULE IX.

Order of Business, Terms of Court.

§ 1. There shall be four terms in each year, beginning respectively on the first Mondays of January, April, July and October.

§ 2. During two weeks of each month, except August and September, beginning on the first Monday of each month, accounts filed in the register's office and in the Orphan's Court (other than triennial accounts of guardians) will be audited, settled and adjusted, and distribution decreed of the balances ascertained to be in the hands of the accountants in the several courts, Nos. 1, 2, 3 and 4.

§ 3. Upon the presentation to the court for confirmation of the accounts advertised by the register of wills and of those filed in this court, the clerk shall divide the same into four lists, as nearly equal as may be, numbered 1, 2, 3 and 4, and shall post duplicates of said lists in the court rooms and in his office, together with a notice that said lists will be called in the courts correspondingly numbered upon the first Monday of the next month, except in the months of August and September, and that said accounts will be called in the order in which they come on the lists, on such days as are indicated in the "Arrangement of Business;" but the court may adjourn or postpone an audit when, in the opinion of the auditing judge, it is necessary.

It shall be the duty of the clerk to give notice of the hearing of the audit lists, provided by this rule, by advertisement, once in the *Legal Intelligencer*, once in the *Weekly Notes of Cases*, and twice in two daily papers, and for such advertisements he shall be allowed the sum of three dollars and fifty cents on each account.⁵

§ 4. When an account is called for audit, there shall be handed to the auditing judge, to be annexed to the

5. See act 18, March, 1875, P. L. 29.

adjudication, a statement or petition, verified by affidavit, setting forth the date of decedent's death, the names and relationship of the persons who claim a share in the distribution, and the manner in which their interest arises. When such claimants are minors, such statement shall contain the names of their guardians and by whom appointed. Such statement or petition shall also set forth in all cases in which there is a will, that the decedent did or did not marry after the date of the will, and that there were or were not children born after that period. In guardians' accounts, the statement shall set forth when the ward became of age, and that he or she had received notice of the time appointed for the audit of the account.

§ 5. Upon the audit of all accounts where the balances consist of cash or securities, which are in whole or in part, to remain in the hands of the accountant as the subjects for further accounting or as continuing trustees, it shall be the duty of the accountants to submit to the auditing judge or auditor, as the case may be, the evidence showing the existence and present holding of the cash, and securities composing the balance in the hands of the accountants by the production of the bank book or statements from the officers of the bank, wherein such cash is alleged to be kept, or the bonds, mortgages, certificates of stock, or other papers showing the part of the balance which may be in securities, or by any other proof which may be deemed necessary or sufficient, and the fact that such production of the necessary proofs and vouchers has been made, shall appear of record in the adjudication of such accounts or in the report of the auditor.

§ 6. In all cases where accountants shall be charged in the accounts filed with the amount of inventory and appraisement, a copy of such inventory as filed shall be exhibited and produced to the auditing judge at the audit of the account.

§ 7. Credits claimed for payment of collateral inheritance tax must be vouched by the receipt of the register of wills, countersigned by the Auditor General.⁶

§ 8. No account of any guardian will be audited or confirmed unless it shall appear to the satisfaction of the court, that the ward, if of full age, or some disinterested friend, if in his or her minority, has had notice that such account will be called for audit on the day fixed by the court.

§ 9. After a judge of the court shall have filed in the office of the clerk his adjudication, showing the adjustment and settlement of an account, and a decree of distribution when necessary, any parties excepting to the same, must file their exceptions with the clerk and furnish a copy of the same to the judge who audited the account, at any time on or before the third Saturday following.⁷ The argument upon such exceptions will be heard by the court, when sitting to hear cases on the argument list. If the exceptions are not filed within the time limited, the adjudication will become absolute.

§ 10. Except during vacation the court will sit at 10 o'clock, A. M., on Saturday of each week to dispose of the current motion list and to receive applications for admission to the bar.

§ 11. The court will not hear any application on Saturday unless the clerk shall have been previously furnished with a memorandum of such application, containing the nature of the application and the name of the

6. See act 6, May, 1844, sec. 3, P. L. 565.

7. "Exceptions in the orphans' court are, in effect, assignments of error, and should indicate with equal exactness the precise grounds upon which they are based." *Teaf's Est.*, 7 C. C. Rep., 463 (Penrose, J., Dec. 28, 1889).

Where no objection is made at the audit, but an objection is filed after the adjudication, the court will not be likely to consider it. *Young's Est.*, 7 C. C. Rep., 287 (Hanna, P. J., Oct. 26, 1889).

counsel presenting the same. Such applications will be called by the court in the order in which they shall have been received by the clerk, and no other business will be attended to until all such applications shall have had an opportunity of being heard.

§ 12. No motion will be entered on the Current Motion List after half-past nine o'clock, A. M., of the day, on which the list is to be called.

§ 13. The argument list will be heard by the court in banc during the week beginning with the third Monday of each month, except July, August and September.

§ 14. No case will be placed on the argument list within five days of calling that list, without a special order of the court.

§ 15. In cases of exceptions in adjudications, the paper book must contain :

First—The statement of facts as set forth by the auditing judge, his ruling thereon, and the essential parts of his reasoning in support of such ruling ;

Second—The exceptions ;

Third—The facts as alleged by the exceptant :

Fourth—A brief of the authorities relied upon in support of the exceptions.

§ 16. The argument list will be called at least three times. Cases will be heard as they are reached, unless the absence of counsel is occasioned by an actual engagement in another court, or unless, by agreement of both sides, they be permitted to go to a subsequent call. When a cause is reached on the last call, if either counsel be present and require it, in the absence of the other, the same shall be heard *ex parte*, and disposed of finally. All causes not answered to on the last call shall be stricken from the list, and not again placed thereon by the clerk, without the written order of counsel.

Exceptions to adjudications, auditors', masters' or examiners' reports shall be placed by the clerk, as of course, on the argument list next succeeding the expiration of the time allowed for filing such exceptions.

§ 17. Auditors, Agreements to confirm Accounts, etc.

a.—Parties in interest desiring the appointment of an auditor must all unite in a written request to the court, signed by themselves or their attorneys. The application must be accompanied by sufficient affidavits that the applicants are all the parties in interest, and that the signatures appended are genuine.

b.—Auditors shall be members of the bar, who have been admitted to practice in this court at least two years.

c.—Public notice shall be given by auditors of their appointment by advertisement made twice successively in the *Legal Intelligencer*, and also every other day five times in one daily paper in this city. They shall state in such notice that their appointment was made by the court at the request of all parties interested in the estate.

d.—Every auditor shall make report within sixty days after his appointment, unless, upon application made, the court enlarge the time; and in default thereof, his appointment may be vacated, and nothing allowed him for expense or trouble in relation to the same.

e.—Auditors or examiners or masters shall not retain their reports as security for their compensation, but when the compensation is allowed by the court, they shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if upon notice thereof he does not pay within the time prescribed by the court.

f.—Any party dissatisfied with the compensation claimed by any auditor, examiner or master, shall have the right to require such auditor, examiner or master, to file his report before payment of such compensation, in order that the same may be taxed by the court.

g.—In all cases in which auditors or examiners or masters shall be appointed, it shall be the duty of every such officer to submit the question of the amount of his compensation to counsel who appear before him representing persons or parties who are liable to pay the costs of the proceeding, or the costs of the settlement of the estate, or of the distribution of the fund thus referred. And said counsel shall designate the sum which in his or their judgment ought to be paid for the services performed, before any amount shall be named or charge made by such auditor or examiner. If the amount of compensation suggested by counsel be not satisfactory to such officer, he shall make a report thereof to the court, and such charge may be supported by any statement or argument which he may choose to submit in justification of his claim to compensation. He shall, also, if requested, set forth the exceptions which have been made thereto. Such report may be interlocutory, and submitted at any time after the services have been performed.

h.—No exception to the report of an auditor will be received, unless the party excepting has filed the same with the auditor by whom the report had been made, whose duty it shall be on such exceptions being filed, to re-examine the subject and amend his report if, in his opinion, such exceptions are in whole or in part well founded. And in order to give all parties in interest an opportunity of entering such exceptions, no auditor shall file his report until ten days after he has notified the parties of his intention so to do on a day designated, and giving them an opportunity of having access to such report. And it is further ordered, that on the hearing of the question of confirming or setting aside any auditor's report, the party excepting thereto shall be confined to the exceptions made by him before the auditor according to the previous requisition of this rule, reserving to the court, how-

ever, the power of committing the report again should justice require it.⁸

i.—All reports of auditors shall be filed on Saturday, and every such report, unless in case of exceptions filed as provided by the foregoing rule, shall be confirmed on the second Saturday succeeding that on which the said report shall have been filed.

j.—In all agreements filed for the purpose of obtaining the confirmation by the court of an account of an executor or administrator, it must be shown by sufficient affidavits :

1st, that the debts of the decedent have been fully paid.

2d, that the parties to the agreement are all the parties interested in the estate, and are of full age and under no legal disability.

3d, in what manner the parties to the agreement have derived their interest in the estate.

In case of an administrator's account, his securities must, in writing, assent to the confirmation.

k.—It shall be the duty of the clerk to notify auditors, masters and examiners of their appointment immediately after the same shall have been made by the court.

l.—Auditors and masters and examiners appointed by this court may at any time, with the leave of the court, require security for the payment of their and the clerk's costs, and may decline to proceed further until such security be entered. No report of an auditor or master and examiner shall be confirmed absolutely until all the costs of the reference, including the costs of the auditor, or master and examiner be paid.

Paper Books. See Order of Business, Rule IX., Sec. 15.

Partition. See Petitions, &c., Rule X, Sec. 5.

8. The court may allow exception to be filed after the time fixed by the rule. *Riegel's Est.*, 133 Pa. St., 38 (*Per Curiam*, March 3, 1890); *Bartolet's Appeal*, 1 Pa. S. C. Cases, 77 (*Per Curiam*, March 29, 1890).

RULE X.

Petitions, Pleadings, Practice, &c.

§ 1. All applications to the court shall be by petition, verified by affidavit, setting forth the facts necessary to give the court jurisdiction, the specific ground of the application or cause of complaint, and the relief prayed for.

§ 1a. If the defendant shall not appear in obedience to the requisition of the citation, it shall be lawful for the court, at any time after the return day, upon proof by affidavit, setting forth the time and manner of service, and after the expiration of ten days from the date of such service, to order the petition upon which the citation was awarded to be taken as confessed, and to make such further order or decree thereon as may be just and necessary, according to the acts of assembly in such case made and provided.⁹

§ 2. The mode of proceeding in controverted cases shall be by petition, answer, replication, &c., and the rules of equity practice adopted by the supreme court of Pennsylvania, May 27th, 1865, so far as they are applicable to the practice and proceedings of this court, subject to the provisions of the acts of assembly regulating such proceedings and practice; but petitions and other pleadings shall not be required to be printed, except in case of petitions for injunctions, and petitions for review.¹⁰

9. The latter portion of this rule was adopted because of the uncertainty of the practice as to whether the citation must be served ten days before the return day, or not. *Palmer's Est.*, 19 W. N. C., 39 (Penrose, J., Dec. 31, 1886); see also *id.* 40.

10. "The adoption of the rules of equity practice was not intended to work a radical change in orphans' court proceedings, so that suitors and respondents should be burdened with heavy costs and expenses, but simply to introduce the most expeditious features of the system as now practiced in the courts, having statutory equity jurisdiction. And in the rule it is expressly declared that the equity rules are adopted

§ 3. Petitions for the sale or mortgaging of real estate of a decedent for the payment of debts, shall set forth the date of his death, the name of his personal representative, and of the persons interested in his estate, under his will or under the intestate laws, as the case may be, stating such as are married women, minors or lunatics, with the names of husbands, guardians or committees.¹¹ Such petitions shall also set forth a description of all real estate of which the decedent died seized, a copy of the inventory of personal property filed in the register's office, and a list of the debts of the decedent, and shall be accompanied by a certificate from the board of revision of taxes, of the official valuation of the real estate proposed to be sold.

§ 4. Petitions for the sale of real estate in other cases, shall set forth all necessary facts with names of parties in interest, &c., &c., as in preceding section, and shall be accompanied by the certificate of the board of revision of the valuation of the real estate asked to be sold, and by affidavits of competent persons acquainted with the value of real estate in the particular locality. Where the value of the interest asked to be sold exceeds \$1000, the petition may be referred by the court to a competent person to examine it, and report upon the propriety of granting the same.

§ 5. Petitions for partition shall conclude with a

only 'so far as they are applicable to the practice and proceedings in this court.''' *Drum's Est.*, No. 2, 13 W. N. C., 164 (Hanna, P. J., Dec. 30, 1882). Cost of printing petition for discharge of executor, not allowed. *Drum's Estate* (supra).

11. The act of Assembly (29, March 1854, sec. 54), does not require personal notice to be given to the heirs (even if minors) of proceedings to sell real estate, to pay debts, "but as a precautionary measure we entirely approve of the rules of the Orphans' court of Allegheny county, which require personal notice to be given of the application and sale" to the widow and heirs. *Wall's Appeal*, 31 Pa. St., 62 (Knox, J., 1857).

prayer for a citation to the parties in interest (whose names, and the nature and extent of their respective interests must be fully set forth in the petition), to show cause why an inquest in partition should not be granted as prayed for.

Decrees for the sale of real estate in partition shall in all cases be subject to the provisions of the Act of Assembly of March 29, 1832, section 43, relative to the share of the widow, if there be one taking under the intestate law; and the order of sale shall set forth, in accordance with said act, that "the share of the widow, and the interest thereof shall be annually and regularly paid to her by the purchaser, his heirs and assigns holding the premises, to be recovered by distress or otherwise as rents are recoverable in this commonwealth, which the said widow shall accept in full satisfaction of her dower in said premises; and at her decease, her share of the purchase money shall be paid to the persons legally entitled thereto;" and it shall be the duty of the clerk to see that this rule is complied with.

§ 6. Where the matters which are the subject of an adjudication or of an auditor's report, are so separate and distinct that an exception to any of them, whether sustained or dismissed, cannot affect the others, and the accountant cannot be prejudiced by complying with the decree relating to the latter, the confirmation of such adjudication shall not be suspended, except to the extent that it may be excepted to, and distribution shall proceed as to all other matters, and the usual process to enforce it may issue.

§ 7. Where an accountant is the exceptant, and in such other cases as the court may direct, the exceptions must be accompanied by an affidavit that they are not intended for delay.

§ 8. All applications to enforce a decree or adjudication for the payment of costs or any other sum of money,

or for the delivery of any goods, chattels, or other property of an estate, by an executor, administrator, guardian or trustee, shall be by petition of the person or persons entitled to the same, briefly setting forth the facts upon which such application is based. If the same be satisfactory to the court, a peremptory order to pay or transfer, assign or deliver, as the case may be, will be granted; a certified copy of which must be served personally upon the respondent, at least ten days prior to the day named in the order. And if the order of the court be not complied with on or before the day so named, upon proof of personal service of the order, an attachment will be awarded.¹²

§ 9. In all *ex parte* proceedings the decree or order asked for shall be prepared by counsel and submitted with the petition.

§ 10. Applications under act of May 14, 1874, for the sale of decedent's real estate, shall be upon joint petition of the widow and heirs, and the guardians or committees of such as are minors, or under disabilities, in whom the real estate shall have vested, setting forth the description of the property, the desire to have the same sold, and its estimated value duly sworn to, together with the affidavit of two disinterested persons familiar with the value of real estate in the locality, that the real estate proposed to be sold is not worth more than one thousand (\$1,000) dollars, accompanied with a certificate from the board of revision of the valuation thereof. And the executor, administrator, or trustee appointed for the purpose, shall make sale, and proceed in all respects as now required for the advertisement, return and confirmation, and accounting for the proceeds of sale and distribution in cases of sales of real estate for the payment of debts of a decedent.

§ 11. In every case in which a petition or application

12. As to satisfaction of decrees, see Rule XII.

shall be made to the court, upon which a citation or a rule shall be awarded, a copy of the petition or application shall be served with the citation or rule, on the party or parties against, or upon whom an order or decree is asked, and proof of the service of such copy shall be made upon the return of the citation or rule.

A copy of the answer, demurrer or replication filed in the cause shall also be served upon the counsel of the opposite party.

Provided, however, that the court in granting the citation or rule, may, upon proper cause being shown, dispense both with the service of the petition or application upon which the same is awarded.

§ 12. Petitions for the sale of decedent's real estate at private sale for the payment of debts, as authorized by the Act of May 9, 1889, P. L. 182, shall set forth the date of his death, the name of his personal representative, and of the persons interested in his estate under his will, or under the intestate law, as the case may be, stating such as are married women, minors, or lunatics, with the names of the husbands, guardians, or committees. Such petition shall also set forth a description of all the real estate the decedent died seized of, a copy of the inventory of personal property filed in the register's office, a copy of the will, if any, a list of the debts of the decedent; and shall be accompanied by a certificate from the board of revision of taxes of the official valuation of the real estate proposed to be sold, and affidavits of at least two competent and disinterested persons acquainted with the value of real estate in the particular locality, that the price offered for the real estate or undivided interest therein is a full and fair price and better than can be obtained at public sale.

§ 13. Such petition shall be filed with the clerk of the court, and notice of the filing thereof shall be given by personal service upon the widow, if any, of the decedent,

and his children, if of full age, and upon their guardians if minors, when resident within the county, at least ten days prior to the day the court will act upon said petition. If said parties reside out of the jurisdiction of the court, said notice may be served by mail addressed to their last known abode. Further notice of the filing of said petition shall be published by the petitioner twice a week for two weeks in a daily newspaper of this county, and once a week for two weeks in the *Legal Intelligencer*; and unless exceptions to the granting of said petition, or objection to the proposed sale, be filed with the clerk before the second Saturday after the expiration of said notice, the court will then take action upon said petition, at which time due proof shall be presented of the service of notice and publication thereof, as above required. Where the value of the real estate, or any interest therein, exceeds one thousand (\$1,000) dollars, the petition may be referred by the court to a competent person to examine the facts of the case and report upon the propriety of granting the prayer thereof.

§ 14. The form of the notice to be given, as directed by the preceding section, shall be as follows :

In the Orphans' court of Philadelphia county. In the matter of the Estate of _____, deceased.

To the heirs, legatees, creditors, and other persons interested in said estate:

Notice is hereby given that _____, Executor (or Administrator as the case may be), has filed in the office of the clerk of the court his (or their) petition, praying for an order of sale of the real estate of said decedent described in said petition at private sale for payment of debts. If no exceptions be filed thereto or objections made to granting the same, the court will take action upon said petition upon Saturday, _____ A. D. 18 ____.

[Signed] _____ A. B.,
Attorney for petitioner.

RULE XI.

Publication of Notices.

The *Legal Intelligencer* will be the weekly newspaper for the publication of notices, under the act of April 5, 1855, including public sales of real estate, such advertisement to consist of a concise and intelligible abstract in accordance with said act as in the case of sheriff's sales: Provided the charge for such publication shall not be greater than the usual rates charged by such newspaper.

RULE XII.

Satisfaction of Decrees.

Acknowledgment of satisfaction of all sums of money, or property ordered to be paid or transferred by any decree of the court, may be made on the docket in the manner practiced in the courts of common law to be attested by the clerk or a deputy. And any officer or party distributing or paying out money or other property, may at the time thereof, or at any time thereafter, require such satisfaction to be entered by the party in person or his attorney, or upon a written authority by him to the clerk of the court.

RULE XIII.

Sureties.

All applications for approval of sureties shall be accompanied by an affidavit of the party or parties offered as security, setting forth—

- I. His, or their, name, residence and occupation.
- II. The location of real estate owned by him or them, or so much as may be sufficient, and a memorandum of the record thereof.
- III. That the title thereto is in his or their name.

IV. The nature and amount of incumbrance, if any, upon the real estate.

V. The assessed value of the real estate described. Said affidavit shall be filed with the clerk of the court.

RULE XIV.

Stenographer.

The official stenographer shall attend the hearings of contested wills and administrations held by the register of wills, and take the testimony produced in such cases. Upon appeal by either party from the decision of the register, the testimony thus taken, including copies of all exhibits admitted in evidence, shall, upon being duly certified by the register, be transmitted with the record to the Orphans' Court, and be used in all subsequent proceedings before said court; *Provided*, that after such appeal the parties thereto shall not be precluded from taking additional testimony, as heretofore, before an examiner appointed by the court.

RULES OF QUARTER SESSIONS.

Assignment of Judges.

The courts of common pleas of the county of Philadelphia in the month of December of every year shall detail the judges who are to hold the courts of oyer and terminer and quarter sessions of the peace for the ensuing year. In case of the inability of any judge assigned to hold the said courts, by reason of sickness, absence, the requirements of the civil business, or other cause, one of the courts of common pleas shall forthwith detail a judge to supply his place for the time being.

RULE I.

Affidavit of Defence—Recognizances.

§ 1. In all actions brought, or hereafter to be brought, in this court on forfeited recognizances, in pursuance of the act of Assembly of April 22d, 1846, the plaintiff shall be at liberty to move for judgment in open court at any time after the third Saturday succeeding the first Monday of the term to which the process issued is returnable, unless the defendant, or some person for him or her, shall have previously filed an affidavit of defence, stating therein the nature and character of the same; *Provided*, always, no judgment shall be entered by virtue of this rule, unless the plaintiff shall have, within two weeks after the return day of the process, filed a copy of the bail bond returned, or other instrument on which the said action is founded.

RULE II.

Bail.

§ 2. In the justification of bail, if freeholders, they will be required to produce their evidence of title, and in all cases, reasonable notice of the names and residences of bail shall be given to the district attorney.

RULE III.

Bench Warrant.

§ 3. No bench warrant shall be issued from the court of quarter sessions or oyer and terminer without the special order in writing of the judge.

RULE IV.

Bills of Exceptions.

§ 4. In every case where a bill of exceptions is tendered, the same shall be prepared in form, and presented to the judge within ten days after the verdict.¹

§ 5. In every case of a bill of exceptions it shall be the duty of the party presenting the bill, within twenty days thereafter, to have the same settled by the judge, before whom the case was tried, on forty-eight hours notice, with a copy of the bill served on the opposite party; otherwise the judge shall not be required to seal the same.²

RULE V.

Clerk of the Court.

§ 6. The clerk of the court shall, upon the first day of each term, present to the presiding judge of the court the docket containing the list of the cases returned to his office for the current term, by the several magistrates of the city

1. See *Haines vs. Comm.*, 99 Pa. St. 410.

2. The court has authority to make these rules. They cannot be waived by the district attorney. *Haines vs. Comm.*, 99 Pa. St., 410 (Sharswood, C. J., Feb. 6, 1882).

and county of Philadelphia, and he shall, by affidavit, say whether the said docket contains a true statement of all the returns made to his office by the magistrates aforesaid.

§ 7. The clerk shall, at the expiration of each three weeks of the term, present to the presiding judge aforesaid a list of such cases as shall have been returned into his office for the current term, subsequent to the first day of said term, by the magistrates of the city and county, which statement shall be verified by the affidavit of said clerk, as provided in the foregoing rule.

§ 8. The clerk shall, within two days after a return or returns shall have been received by him, transmit the same to the district attorney's office for the county, and shall immediately thereafter present a list of the returns so transmitted as aforesaid to the court, and in like manner verified by affidavit.

RULE VI.

Constables.

§ 9. The constables in the several wards of the city of Philadelphia, in making their monthly returns required by law, shall state what violations, if any, of the law regulating the sale of liquor, have been within their bailiwicks; they shall give the names of all persons whom they have reason to believe are violating the law, and the names of persons known to frequent places where it is believed liquor is being sold in violation of law; they shall also make returns of such violations in their bailiwicks where it is reputed that violations of the law regulating the sale of liquor are taking place.

RULE VII.

Costs.

§ 10. No bill of costs shall be filed without an affidavit of its being just and true.

§ 11. The clerk shall tax bills of cost if required, and if the money be paid he shall hold it, if it be stopped for taxation.

§ 12. Either party may have the bill taxed on twenty-four hours notice to the opposite party ; the hour to be fixed for this taxation shall be from two to three o'clock P. M.

§ 13. Three days shall be allowed for appeals from the taxation of bills of cost, which shall be made by filing written exceptions and specifications to the objections, and with an affidavit of the truth of the facts contained in the exceptions not appearing upon the record as aforesaid, the costs shall be paid over according to the taxation.

RULE VIII.

Election Cases.

§ 14. All petitions in contested cases hereafter filed in this court, shall be assigned to and heard by the judges of this court sitting in the court of common pleas, to which, under the general rules of the several courts of common pleas, the current business of said courts shall at the time be assignable; and the said judges, to whom any petition shall be assigned as above directed, shall have exclusive jurisdiction of all subsequent proceedings in such case.³

RULE IX.

Election Matters.

§ 15. Petitions for the division and rearrangement of election divisions must set forth the whole of the territory intended to be effected, and must be presented on and between the first Monday of March and the first Monday of May in each year; and reports thereon must be made

3. Paper books in contested election cases shall be printed, sec. 30.

in time for the consideration of the judges, who may be designated for that purpose, at the meeting of the board on the first Monday of June. Notice of the filing of such petitions must be given to the city solicitor.

§ 16. Petitions for the correction of the assessors' registry list of voters shall set forth the particular facts which are alleged as breaches of duty by the assessors, and shall be heard in open court on citations or rules to show cause why the lists should not be corrected, of which forty-eight hours notice shall be given to the assessors charged with breach of duty. Such petitions shall be presented in the month of September only.⁴

RULE X.

Habeas Corpus.

§ 17. In all cases of *habeas corpus* forty-eight hours notice, in writing—stating the case, the crime alleged, and the magistrate by whom the party was committed, of the time of hearing fixed by the court—must be given to the district attorney and the committing magistrate, and to the witnesses examined before the magistrate, the service of which notice must, if required, be proved before the hearing can proceed.

RULE XI.

Indictments.

§ 18. All bills of indictment shall be numbered either at the office of the district attorney or by the grand jury before they are presented to the court.

RULE XII.

Jurors.

§ 19. The clerk of the court shall take charge of the

4. See act of 29, May 1891, P. L., 134, as to duties of assessors. Petitions for correction of lists may be presented to judge of common pleas. Section 3 of act 29, May, 1891.

list of jurors for each term of the court. He shall, at the opening of the court each day, call said jurors. He shall certify to the court each day the number of jurors who are present and answer to the call, and also the names of those who may be excused for the term or any day thereof, and also the names of absentees ; when required by the presiding judge, these statements shall be verified by affidavit. When the clerk shall have prepared the list of jurors who have attended during any term of the court, he shall, before he presents the same to the judge for his approval, verify the list by affidavit.

RULE XIII.

Liquor License Applications.

§ 20. All licenses granted shall be for one year from the 1st day of June, and shall expire on the 1st day of June of the following year, without regard to the date at which the same were issued.

§ 21. Applications for licenses shall be heard on the first Monday of March in every year, and the hearing of such applications shall be continued for such length of time as may be necessary to dispose of them. The clerk of the court shall set down said applications upon a list in the order in which they come to his hands, and said list shall be called in the order in which the applications are there set down. Applicants for and remonstrants against the granting of the license may be heard, if they desire it, by one counsel on each side, but no counsel shall be heard for more than ten minutes.

§ 22. Three judges shall be assigned to hear and determine applications for license.

§ 23. All applications for license shall be filed with the clerk of the court three weeks before the first Monday of March, the petitioner paying the clerk the fee required by the 4th section of the act at the time of filing the petition.

§ 24. The clerk of the court shall cause to be published three times in two newspapers, to be designated by the court, a list containing the names of the petitioners, their respective residences, and the place for which application is made. This publication shall be made on the Wednesday, Thursday, and Friday of the third week before the time fixed for the hearing.

§ 25. All applications for license shall be by petition in writing, which petition shall be verified by affidavit, shall contain full statements of the several matters required by the 5th section of the act of 13th of May, 1887, and shall be accompanied by the certificate required by the 6th section of that act. All remonstrances or petitions against the granting of license shall be in writing, and shall be filed with the clerk before the hearing, but no charge shall be made for such filing.

§ 26. When an application shall be granted by the court, the clerk of the court shall give the applicant a certificate to that effect, directed to the city treasurer, and the applicant shall within fifteen days thereafter pay to the city treasurer the sum of \$500 required by the act to be paid,⁵ and upon the production and filing with the clerk of the city treasurer's receipt, and after the applicant has given the bond required by the 10th section of the act of May 13, 1887, the clerk shall issue a license in the following form, duly attested by the clerk and under the seal of the court, viz. :

COURT OF QUARTER SESSIONS OF PHILADELPHIA.

This is to certify that _____ has been duly licensed by the Court of Quarter Sessions of Philadelphia County to sell vinous, spirituous, malt or brewed liquors at retail for

5. Fee is \$1,000, by act of 9 June, 1891, P. L. 248.

the space of one year from June 1st, A. D. , at (here insert the place).

In witness whereof I have hereunto set my hand and the seal of the said court this day of , A. D.

[Seal] , Clerk.

In default of the production and filing with the clerk of the city treasurer's receipt, as aforesaid, within fifteen days after the application has been granted, the clerk shall forthwith mark said application and grant "revoked."

§ 27. All matters relative to licenses to sell liquors, excepting rules to revoke such licenses, shall be referred to and determined by the judges who were assigned to hear applications for licenses prior to March in each year.

RULE XIV.

Motions and Arguments—Paper Books.

§ 28. On all arguments on demurrers, reserved points, special verdicts, motions in arrest of judgments, cases stated for the opinion of the court, rules to show cause why new trials should not be granted, and exceptions, the attorneys for the respective parties shall each deliver a paper book, setting forth the substance of each case, and the points discussed, to each of the judges previous to the argument.

§ 29. In all cases on the motion and argument lists, the party who is entitled to begin shall furnish to each of the judges a paper book containing a full and distinct statement of all facts conducive to a ready apprehension of the matter to be argued.

§ 30. Paper books shall be either written in a plain, legible hand or printed, and endorsed with the names of all the parties, or petitioner, as the case may be, and also the names of the counsel furnishing the paper book. Where the paper book is made of a press copy, the same

shall be backed with foolscap paper and the copy trimmed to correspond in size.

Paper books in contested elections shall in all cases be printed.

RULE XV.

New Trials.

§ 31. Unless otherwise ordered by the court, but one counsel will be heard in support of a rule to show cause why a new trial should not be granted.

§ 32. No rule to show cause why a new trial should not be granted will be allowed by the court, unless the judge who tried the cause shall in the first instance entertain a motion for such rule ; which motion, if not so entertained, shall be at once overruled.

RULE XVI.

Payment of Money.

§ 33. All orders for the payment of money, or upon which a warrant for the payment of money shall or can be based, and to be countersigned by a judge, shall be presented to the judge at least twenty-four hours before he shall be expected to sign the same.

§ 34. The crier of the court shall, from day to day, note the name of each case presented for trial, together with the name or names of the witnesses examined for the commonwealth and defence, and shall keep said list in his exclusive possession, subject to the inspection of the court alone, and when required shall verify the same by affidavit. Certificates for the payment of witness fees shall be handed by the clerk to the crier, who shall certify that such witnesses were called and examined in the cause.

RULE XVII.

Records.

§ 35. The clerk of the court shall deposit in a fire-proof provided for that purpose, all bills of indictment acted upon by the grand jury of the county ; for the present, and until otherwise ordered, the key of said fire-proof shall be and remain in the exclusive possession of the deputy clerk, in daily attendance upon the court ; the said deputy shall be held accountable for the safe-keeping of every bill of indictment found or ignored by the grand jury, and in the event of the loss or destruction of any bill of indictment so found or ignored as aforesaid, by reason of the wilful or negligent conduct of the deputy, he shall be *ipso facto* in contempt, and shall be punished as provided by law at the discretion of the court.

§ 36. No record of the court shall, on any account whatever, be removed from the office of the clerk, except by special order of one of the judges of the court, but the clerk shall, at all reasonable times, allow copies of said records to be made in the office of said clerk by parties interested, or their agents or attorneys.

RULE XVIII.

*Road Cases.*⁶

§ 37. All petitions in regard to the opening, widening, or vacating of any roads or streets, or relative to the as-

6. The above rule, sections 37 to 53, relating to road cases, were adopted by the court after the passage of the act of May 6, 1887, P. L., 87, and to carry out its provisions. The act, however, with the exception of the first two sections, has been declared unconstitutional, and as a consequence much of the above rule has no application. *In re Ruan St.*, 132, Pa. St., 257 (Williams, J., Feb. 17, 1890.)

The opinion of the supreme court *in re plan 166*, 28 W. N. C., 406 (Mitchell, J., Oct. 5, 1891), holds that the court of quarter sessions has

assessment of damages therefor, (or for changes of grades), shall be assigned consecutively, as they may be filed, to the judges of the court of quarter sessions composing the several courts of common pleas, beginning with court No. 1. Notice of the filing of such petitions, and a copy thereof, shall in each case be given to the city solicitor at least one week before the jurors shall be appointed.

§ 38. In such cases, the jurors (and the masters and stenographers, whenever such officers shall be appointed) shall be appointed, and all orders and decrees in the proceedings shall be made by the judges to whom the petitions shall have been assigned.

§ 39. In any cases in which, by reason of the proximity of the roads or streets concerned, or for other reasons, it may be of importance that the proceedings should be had before the same judges who shall already have jurisdiction over a pending proceeding, it shall be competent for the judges to whom any petition may be assigned, upon motion and proper cause shown, to transfer the same to the judges before whom such prior proceeding shall be in progress.

§ 40. Current motions in road cases shall be heard in connection with like motions in the several courts of common pleas.

§ 41. The clerk of the court shall cause to be made out and delivered to the court clerks of the several courts

no jurisdiction in change of grade cases, unless the grade which is changed was established prior to the Constitution of 1874, and that the remedy for damages occasioned by a change of grade in the first instance is an action on the case in the courts of common pleas. But see act May 16, 1891 (P. L., 75). See *Orthodox Street*, 49 L. I., 24 (C. P. 4, Arnold, J., January 9, 1892); where it was held, that petitions for damages for change of grade must be filed in the court of common pleas, and for opening or widening in the court of quarter sessions.

of common pleas, one week before the beginning of each term of the latter, a list of all cases which shall then be ripe for argument upon exceptions or motions to quash, and such lists shall be published in connection with the lists of the said courts of common pleas.

§ 42. All attorneys engaged for property owners or tenants in any proceedings shall, at or before the time of their appearing before any jury, file their appearance, together with a statement of their office address and the address of their clients, with the clerk of the court, who shall enter the same on the margin of the docket of the case.

§ 43. Copies of all petitions, motions and exceptions filed in any case shall forthwith, and before they shall be presented to the court, be served by the attorneys or the party filing them, upon the city solicitor, who shall also, in like manner, serve copies of all such papers filed by him upon the parties who are to be effected thereby, or their counsel.

§ 44. At least ten days notice shall be given to the city solicitor in writing of the time and place fixed for the first meeting of any jury.

§ 45. A written or printed notice of the filing of the petition and of the time and place of the first meeting of the jury shall, in each case, be given by the petitioner at least ten days before such first meeting, to all the registered owners and occupants of ground situated on the line of the street to which the petition relates and between the terminal points mentioned in the petition. The notice may be served either personally or by leaving the same at the residence of the person to be notified with an adult member of his or her family. Service may be made upon a non-resident registered owner by registered letter. In case, after diligent inquiry and effort, the

registered owner cannot be found or served, application may be made to the judges of the court having the jurisdiction of the matter under these rules by petitions supported by affidavit setting forth the grounds therefor, for leave to make service by advertisement. Proof of service of such notice and of the manner of making the same upon each and all of the said owners and occupants must be made by affidavit and filed with the jury at their first meeting and be attached to their report.

§ 46. At the first meeting of any jury of view or of damages, if any of the jurors drawn shall be absent, a copy of the notice served upon such absent jurors shall be produced, verified by the oath or affirmation of the person by whom the same was served, which copy shall be accompanied by proof of the time, place and manner of said service, and the jury shall annex to their report the said copy of notice and affidavit, and in default thereof the report shall not be approved by the court.

§ 47. Juries shall hold as many as two meetings in each week. Their meeting shall be of at least three hours duration at each sitting, and only such jurors as shall have attended during the whole of any meeting shall be entitled to compensation therefor. The master shall in each case attach to the report of the jury a certificate stating the number and the length of their several meetings, and what jurors have been present thereat during the whole session.

§ 48. When juries of view or of damages adjourn from time to time, unless such adjournments and the causes thereof appear on the report, and the said causes are decreed by the court to be proper, the court shall not certify to any order to pay for more than one meeting.

§ 49. All reports of juries shall be filed within three months after their appointment, unless the time shall be

extended upon motion and cause shown by affidavit which shall set forth the number of meetings already held, and the amount of testimony taken thereat.

§ 50. In any case in which a jury shall, in the first instance, determine that properties have been benefitted by the opening, widening or change of grade of any street, and that the owners of such properties shall pay the whole or a part of the damages to be assessed, notice thereof and of the amount of the estimated benefits, as well as of the time and place when the jury will hear objections, shall be given in the same manner as is provided in the foregoing ninth rule, to all the registered owners and the occupants of the properties regarded by the jury as benefitted, at least ten days previous to the meeting of the jury for the hearing of objections. Proof of service of the said notice and of the manner of making the same upon each owner or occupant as aforesaid shall be made by affidavit, and filed with the jury at such meeting, and be attached to their report.

§ 51. In all cases of the assessment of damages for the opening or widening of streets, the jury shall state in their report whether or not they have considered and embraced in their finding the advantages or disadvantages due to the grade at which the said street is to be opened or widened according to existing grade regulations.

§ 52. Before any money awarded by a jury shall be payable, the person in whose favor the award shall be made shall exhibit to the city solicitor evidence of his or her title to the ground taken or injured, and searches for ground rents, liens or incumbrances affecting the same, and, in case a defect of such title, or an existing ground rent, or an incumbrance or lien upon the property shall appear, it shall be competent for the city solicitor to move the court, upon a petition setting out such defect, ground rent or lien, to pay the money awarded into court. The

expense of obtaining such searches shall be taxed as a part of the costs of the proceedings.

§ 53. Any petitioner or other party on whose motion or by whose default a continuance is made necessary, shall be charged by the master with the costs of the meeting, and be so reported to the court, which may relieve against such charge on sufficient ground shown.

§ 54. When an appeal is taken under the provisions of the act of June 13, 1874 (P. L., 283), the said appeal, together with the affidavit required to accompany the same, shall be filed in the court of common pleas, the judges of which composed the court of quarter sessions, to which a petition for a jury shall have been assigned under the rules ; and the said court of common pleas shall have exclusive jurisdiction of all proceedings upon such appeal.

RULE XIX.

Sheriff.

§ 55. The sheriff of the county of Philadelphia shall return specially to the court, at the expiration of every three weeks of the term, the amount of fines collected by him in every case in which a fine has been imposed by the court ; he shall also state fully in whose possession the fines so collected remain at the date of said return, and when he has been unable to collect any fine imposed as aforesaid, he shall return specially to the court the reason which has prevented him from collecting the said fine or fines so imposed as aforesaid.

RULE XX.

Tipstaves.

§ 56. The officers of the courts of oyer and terminer and quarter sessions shall be appointed for one year, subject to removal at any time for cause.

§ 57. The tipstaves of said courts, while on duty, shall wear a uniform suit of dark blue material, and a conspicuous badge, marked "Officer of the Criminal Court," and shall, during their attendance in the court room, carry a white staff.

§ 58. No tipstaff shall absent himself from the court room during the session of the court without leave of the judge holding the term, except when required to be away in the discharge of his duty. The crier and assistant crier are charged with the enforcement of this order, and are required to report every case of disobedience in this respect immediately to the court.

§ 59. No tipstaff shall resort to or enter any tavern or other place for the sale of intoxicating liquors between the hours of nine A. M., and four P. M., or during the session of the court when extending beyond the latter hour, except to take his meals, or when required in the performance of official service.

§ 60. No tipstaff shall permit any person to converse with any grand or petit juror upon any business upon which the grand or petit juror may be called upon to act. Nor shall any officer hold such conversation himself.

§ 61. No tipstaff shall be permitted to charge or receive any fee or compensation for the performance of his duties, other than the per diem allowance fixed by the court as the compensation of such officers.

§ 62. No tipstaff shall in any case recommend or propose to defendants, the employment of counsel. Nor shall any compensation, pecuniary or otherwise, be taken by such officers from attorneys or parties for any cause whatever connected with the business of the court or the trial of defendants.

§ 63. Any violation of the foregoing orders shall be cause for immediate dismissal from office.

RULE XXI.

Trial by Jury.

§ 64. Causes shall be tried when they are called, and the engagements of counsel in other courts will not be considered a ground of postponement or delay.

§ 65. After evidence in a cause on trial is closed (except in capital cases) neither party shall be entitled to address the jury by more than one counsel. If evidence has been received on behalf of each party the counsel having the right on the pleading to begin shall sum up ; one of the opposite counsel may then address the jury, and afterwards the counsel who commenced summing up may conclude. When the party not entitled to begin shall produce no testimony, the counsel of the other party shall be confined to his address in summing up, and shall not be heard in reply.

§ 66. The entire examination of a witness shall be conducted by one only of the counsel of each party ; the re-examination of the party calling him shall be confined to the matter of cross-examination.

§ 67. Subpœnas for witnesses residing within the city or county of Philadelphia, shall be taken at least one day previously to the day assigned for the trial of the case in which their attendance shall be required, or such action shall not be continued on account of the absence of any such witness, if he were or might be found at his residence within that period.

§ 68. The detention of a witness under examination for the purpose of noting the testimony shall be regulated by the discretion of the judge in the particular case on trial.

§ 69. In all cases where persons are bound over to appear as witnesses for the commonwealth, they must attend

without notice by subpoena, and failing to do so their recognizance will be forfeited.

§ 70. If, on the trial of the cause, the counsel for the commonwealth or defendant wish the charge of the court on any point or points of law arising in the cause, the point or points on which the charge is requested shall be distinctly stated in writing and delivered to the court as soon as the evidence is closed and before the commencement of the summing up.

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